2020

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued December 2020

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ENACTED THROUGH THE 2020 REGULAR SESSION
OF THE LEGISLATURE

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By the Editorial Staff of the Publisher

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2020 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2020 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2020 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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December 2020 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

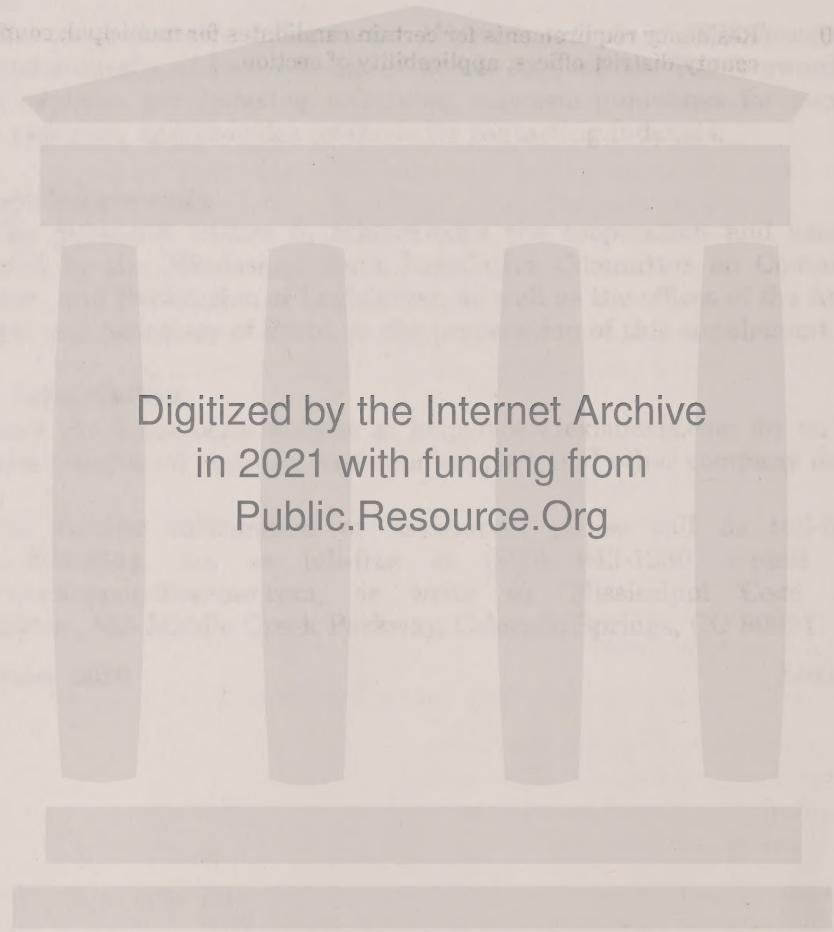
TITLE 23. ELECTIONS

CHAPTER 15. Mississippi Election Code

ARTICLE 11. NOMINATIONS

SEC.

23-15-300. Residency requirements for certain candidates for municipal, county or county district offices; applicability of section.



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MISSISSIPPI CODE
1972
ANNOTATED

VOLUME SIX A

TITLE 23.

ELECTIONS

Chapter 15. Mississippi Election Code. 23-15-1

CHAPTER 15.

MISSISSIPPI ELECTION CODE

Article 3. Voter Registration. 23-15-11
Article 7. Election Officials. 23-15-211
Article 9. Supervisor's Districts and Voting Precincts. 23-15-281
Article 11. Nominations. 23-15-291
Article 13. Ballots. 23-15-331
Article 19. Absentee Ballots. 23-15-621
Article 31. Judicial Offices. 23-15-971

ARTICLE 3.

VOTER REGISTRATION.

Subarticle B. Procedures for Registration. 23-15-31
Subarticle F. Purging. 23-15-151

SUBARTICLE A.

QUALIFICATION OF ELECTORS.

§ 23-15-11. Qualifications, generally.

JUDICIAL DECISIONS

1. In general.

Use of the word any in Miss. Code Ann. § 23-15-11 signals that as long as the statute is satisfied, any qualified elector can vote in any election. Folson v. Fulco, — So. 3d —, 2020 Miss. LEXIS 419 (Miss. Nov. 5, 2020).

OPINIONS OF THE ATTORNEY GENERAL

Under general registration statute, Miss. Code Section 23-15-11, newly annexed county electors must reside in municipality for thirty days to be eligible to vote in municipal elections. Hewes, Mar. 5, 1993, A.G. Op. #92-0969.

A seventeen-year-old who will be eighteen years of age on or before the date of the special election may register to vote thirty days or more prior to a special election. Wilson, Nov. 14, 1997, A.G. Op. #97-0725.

A computerized voter list that does not have the electors' signatures on it is considered exempt for purposes of the Mississippi Public Records Act of 1983 if the information on the list was obtained from exempted records. Evans, Dec. 5, 1997, A.G. Op. #97-0760.

A person may not qualify as an elector in two adjoining counties by claiming to simultaneously reside in both such counties; absent a conclusive indicator of residency, such as filing for homestead exemption, the question of qualifying as an elector should be determined, based on the facts and circumstances of each case, by reference to other relevant factors including the intent to remain, indefinitely, in a county where an actual residence has been established. Hewes, April 3, 1998, A.G. Op. #98-0098.

Even in a citywide election, an individual may only cast a ballot in the voting precinct or ward in which he or she is registered to vote. Hafter, Dec. 22, 1999, A.G. Op. #99-0697.

A registered voter may not cast a lawful ballot in a voting precinct other than the precinct where he or she resides. Shepard, July 14, 2003, A.G. Op. 03-0345.

If a candidate establishes his residence within the corporate limits of a municipality at least 30 days prior to the election and registers to vote and meets all other qualifications to be mayor, he could qualify to run for that office. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

A candidate could establish his residence within the corporate limits 30 days before the election and then file his qualifying papers at least 20 days prior to the municipal special election and be eligible to have his name placed on the ballot. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

§ 23-15-13. Change of residency to new ward or voting precinct within same municipality.

OPINIONS OF THE ATTORNEY GENERAL

It is duty and responsibility of registrar, upon request of individual voter, to make necessary changes on all appropriate registration records and enter appropriate data into computer to reflect any change in voter's precinct necessitated by change in that voter's residence; however, task of making changes on pollbooks and registration books is ministerial task that should be performed by election commission in their purging activities if registrar fails to act. Horton, March 21, 1990, A.G. Op. #90-0201.

If a qualified elector of a county moves within the county less than 30 days before an election, pursuant to this section he is not disqualified and would be entitled to vote in the precinct of his residence by affidavit ballot if his name does not appear on the poll book of his precinct. Assuming such affidavit is properly executed and all required information is given in the affidavit and the prescribed forms, the ballot would be a lawful one and would be counted. Sautermeister, Sept. 26, 2003, A.G. Op. 03-0497.

SUBARTICLE B.

PROCEDURES FOR REGISTRATION.

§ 23-15-33. Registrar to register voters.

OPINIONS OF THE ATTORNEY GENERAL

If precinct is split by supervisor district lines it would also be registrar's duty to make determination, upon registration, of proper supervisor district for each individual residing in precinct; duly appointed deputy registrar may, of course, perform these tasks for registrar. Horton, March 21, 1990, A.G. Op. #90-0201.

§ 23-15-39. Form of application for registration; allowances for office supplies; determination on application; notice to applicant; assistance to applicant; voter registration number; fees and costs; forwarding of application.

HISTORY: Derived from 1972 Code § 23-5-17 [(Codes, 1942, § 3209.6; Laws, 1955, Ex ch. 102, § 1; Laws, 1960, ch. 449, § 1; Laws, 1962, ch. 569, § 1; Laws, 1965, Ex Sess, ch. 10, §§ 1-4) and § 23-5-303 (Codes, 1942, § 3203-502; Laws, 1972, ch 490, § 502; Laws, 1975, ch 502, § 1; Laws, 1984, ch. 457, § 1; repealed by Laws, 1986, ch 495, §§ 335, 337]; en Laws, 1986, ch. 495, § 12; Laws, 1988, ch. 350, § 3; Laws, 1991, ch. 440, § 8; Laws, 2000, ch. 592, § 1; Laws, 2001, ch. 308, § 1; Laws, 2004, ch. 305, § 9; Laws, 2006, ch. 574, § 3; Laws, 2017, ch. 441, § 10, eff from and after July 1, 2017; brought forward without change, Laws, 2019, ch. 340, § 7, eff from and after July 1, 2019.

Editor's Notes — This section was brought forward without change by Laws of 2019, ch. 340, § 7, effective from and after July 1, 2019. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not reprinted in this supplement.

Amendment Notes — The 2019 amendment brought the section forward without change.

OPINIONS OF THE ATTORNEY GENERAL

Failure of applicant to give his social security number does not disqualify him to register but requires registrar to assign voter registration number to individual and that number must appear on application. Dean, March 28, 1990, A.G. Op. #90-0222.

Under Miss. Code Section 23-15-39(8), all newly annexed county electors who have resided in annexed area for at least thirty days from effective date of annexation are automatically added to municipal registration books as registered voters of municipality. Hewes, Mar. 5, 1993, A.G. Op. #92-0969.

SUBARTICLE E.

REGISTRATION RECORDS.

§ 23-15-135. Registrar to keep master voter roll and pollbooks and provide location for accepting applications for Mississippi Voter Identification Cards.

OPINIONS OF THE ATTORNEY GENERAL

The Registrar would be the appropriate official to transfer the names of registered voters to a newly established automated voter registration system. Griffin, Feb. 12, 1992, A.G. Op. #91-0957.

There is no apparent legal authority that would allow registration books and pollbooks to be kept and maintained in place other than office of circuit clerk/ registrar except when pollbooks are being used in conduct of election. Pryor, Dec. 23, 1992, A.G. Op. #92-0931.

County registrar is "certifying official" for purpose of certifying number of signatures of qualified electors on petitions calling for election pursuant to particular statute as well as on nominating petitions for candidates for public offices. Doggett Sept. 8, 1993, A.G. Op. #93-0644.

Any and all requests for access to or copies of county voter registration records must be made to the county registrar, and it is the duty and responsibility of the county registrar to insure that voters' social security numbers, telephone numbers, and dates of birth and age information are excluded prior to granting access or providing copies of such records. Johnson, March 10, 2000, A.G. Op. #2000-0112.

The practice of boards of supervisors to seek certification from their respective county circuit clerks as to the number of signatures of qualified electors appearing on such petitions prior to the adjudication of the sufficiency of those petitions is, in most if not all cases, necessary to protect the integrity of the process, since circuit clerks are the custodians of the registration records. Benvenutti, March 17, 2000, A.G. Op. #99-0216.

Each circuit clerk is responsible for making available public records of his office when properly requested. Information such as social security numbers, telephone numbers, dates of birth and age information must be erased or removed from such records before they are made available to the public. There is no specific statutory direction on the manner in which such information is to be removed. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

Each county registrar must use sound discretion in determining whether the chairman of the election commission should be the only one other than the registrar to have a key to the room where voter registration records are stored. Reasonable hours of access to the room would be established by the circuit clerk, in his or her discretion. Griffith, Aug. 8, 2005, A.G. Op. 05-0378.

SUBARTICLE F.

PURGING.

Sec.

23-15-153. Revision of county voter roll by election commissioners; removal of voters from roll; amount and limitations of per diem payments to election commissioners; distribution of master voter roll to municipal registrars; certification of hours worked; number of days in calendar year for which election commissioners entitled to receive compensation.

§ 23-15-151. List of persons convicted of certain crimes to be kept by circuit clerk and entered into Statewide Elections Management System; removal of disenfranchised voters from system.

OPINIONS OF THE ATTORNEY GENERAL

The compilation required by this section should include the names of persons who have been convicted of any of the crimes identified as disqualifying by the courts or by official opinions of the Attorney General. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

Where no roll of persons convicted of crimes was maintained by previous clerks, a newly appointed clerk should make reasonable attempts to list persons known to have previous convictions. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

This section requires the circuit clerk of each county to prepare and maintain a list of all persons who have been convicted of disqualifying crimes in their respective counties. However, any documentation received from a circuit clerk of another county, the State of Mississippi or any other source showing that a resident of a particular county has a disqualifying conviction should be recorded in such compilation or preserved in some other manner in order to insure that the name of the person convicted does not appear on the registration records. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

§ 23-15-153. Revision of county voter roll by election commissioners; removal of voters from roll; amount and limitations of per diem payments to election commissioners; distribution of master voter roll to municipal registrars; certification of hours worked; number of days in calendar year for which election commissioners entitled to receive compensation.

(1) At least during the following times, the election commissioners shall meet at the office of the registrar or the office of the election commissioners to carefully revise the county voter roll as electronically maintained by the Statewide Elections Management System and remove from the roll the names of all voters who have requested to be purged from the voter roll, died, received an adjudication of non compos mentis, been convicted of a disenfranchising crime, or otherwise become disqualified as electors for any cause, and shall register the names of all persons who have duly applied to be registered but have been illegally denied registration:

(a) On the Tuesday after the second Monday in January 1987 and every following year;

(b) On the first Tuesday in the month immediately preceding the first primary election for members of Congress in the years when members of Congress are elected;

(c) On the first Monday in the month immediately preceding the first primary election for state, state district legislative, county and county district offices in the years in which those offices are elected; and

(d) On the second Monday of September preceding the general election

or regular special election day in years in which a general election is not conducted.

Except for the names of those voters who are duly qualified to vote in the election, no name shall be permitted to remain in the Statewide Elections Management System; however, no name shall be purged from the Statewide Elections Management System based on a change in the residence of an elector except in accordance with procedures provided for by the National Voter Registration Act of 1993. Except as otherwise provided by Section 23-15-573, no person shall vote at any election whose name is not in the county voter roll electronically maintained by the Statewide Elections Management System.

(2) Except as provided in this section, and subject to the following annual limitations, the election commissioners shall be entitled to receive a per diem in the amount of One Hundred Dollars ($100.00), to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties in the conduct of an election or actually employed in the performance of their duties for the necessary time spent in the revision of the county voter roll as electronically maintained by the Statewide Elections Management System as required in subsection (1) of this section:

(a) In counties having less than fifteen thousand (15,000) residents according to the latest federal decennial census, not more than fifty (50) days per year, with no more than fifteen (15) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(b) In counties having fifteen thousand (15,000) residents according to the latest federal decennial census but less than thirty thousand (30,000) residents according to the latest federal decennial census, not more than seventy-five (75) days per year, with no more than twenty-five (25) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(c) In counties having thirty thousand (30,000) residents according to the latest federal decennial census but less than seventy thousand (70,000) residents according to the latest federal decennial census, not more than one hundred (100) days per year, with no more than thirty-five (35) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(d) In counties having seventy thousand (70,000) residents according to the latest federal decennial census but less than ninety thousand (90,000) residents according to the latest federal decennial census, not more than one hundred twenty-five (125) days per year, with no more than forty-five (45) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(e) In counties having ninety thousand (90,000) residents according to the latest federal decennial census but less than one hundred seventy thousand (170,000) residents according to the latest federal decennial census, not more than one hundred fifty (150) days per year, with no more

than fifty-five (55) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(f) In counties having one hundred seventy thousand (170,000) residents according to the latest federal decennial census but less than two hundred thousand (200,000) residents according to the latest federal decennial census, not more than one hundred seventy-five (175) days per year, with no more than sixty-five (65) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(g) In counties having two hundred thousand (200,000) residents according to the latest federal decennial census but less than two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census, not more than one hundred ninety (190) days per year, with no more than seventy-five (75) additional days allowed for the conduct of each election in excess of one (l) occurring in any calendar year;

(h) In counties having two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census but less than two hundred fifty thousand (250,000) residents according to the latest federal decennial census, not more than two hundred fifteen (215) days per year, with no more than eighty-five (85) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(i) In counties having two hundred fifty thousand (250,000) residents according to the latest federal decennial census but less than two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census, not more than two hundred thirty (230) days per year, with no more than ninety-five (95) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(j) In counties having two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census or more, not more than two hundred forty (240) days per year, with no more than one hundred five (105) additional days allowed for the conduct of each election in excess of one (l) occurring in any calendar year.

(3) In addition to the number of days authorized in subsection (2) of this section, the board of supervisors of a county may authorize, in its discretion, the election commissioners to receive a per diem in the amount provided for in subsection (2) of this section, to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties in the conduct of an election or actually employed in the performance of their duties for the necessary time spent in the revision of the county voter roll as electronically maintained by the Statewide Elections Management System as required in subsection (1) of this section, not to exceed five (5) days.

(4)(a) The election commissioners shall be entitled to receive a per diem in the amount of One Hundred Dollars ($100.00), to be paid from the county general fund, not to exceed ten (10) days for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in the

revision of the county voter roll as electronically maintained by the Statewide Elections Management System before any special election. For purposes of this paragraph, the regular special election day shall not be considered a special election. The annual limitations set forth in subsection (2) of this section shall not apply to this paragraph.

(b) The election commissioners shall be entitled to receive a per diem in the amount of One Hundred Fifty Dollars ($150.00), to be paid from the county general fund, for the performance of their duties on the day of any primary, runoff, general or special election. The annual limitations set forth in subsection (2) of this section shall apply to this paragraph.

(c) The board of supervisors may, in its discretion, pay the election commissioners an additional amount not to exceed Fifty Dollars ($50.00) for the performance of their duties at any election occurring from July 1, 2020, through December 31, 2020, which shall be considered additional pandemic pay. Such compensation shall be payable out of the county general fund, and may be payable from federal funds available for such purpose, or a combination of both funding sources.

(5) The election commissioners shall be entitled to receive a per diem in the amount of One Hundred Dollars ($100.00), to be paid from the county general fund, not to exceed fourteen (14) days for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in the revision of the county voter roll as electronically maintained by the Statewide Elections Management System and in the conduct of a runoff election following either a general or special election.

(6) The election commissioners shall be entitled to receive only one (1) per diem payment for those days when the election commissioners discharge more than one (1) duty or responsibility on the same day.

(7) In preparation for a municipal primary, runoff, general or special election, the county registrar shall generate and distribute the master voter roll and pollbooks from the Statewide Elections Management System for the municipality located within the county. The municipality shall pay the county registrar for the actual cost of preparing and printing the municipal master voter roll pollbooks. A municipality may secure "read only" access to the Statewide Elections Management System and print its own pollbooks using this information.

(8) County election commissioners who perform the duties of an executive committee with regard to the conduct of a primary election under a written agreement authorized by law to be entered into with an executive committee shall receive per diem as provided for in subsection (2) of this section. The days that county election commissioners are employed in the conduct of a primary election shall be treated the same as days county election commissioners are employed in the conduct of other elections.

(9) In addition to any per diem authorized by this section, any election commissioner shall be entitled to the mileage reimbursement rate allowable to federal employees for the use of a privately owned vehicle while on official travel on election day.

(10) Every election commissioner shall sign personally a certification setting forth the number of hours actually worked in the performance of the commissioner's official duties and for which the commissioner seeks compensation. The certification must be on a form as prescribed in this subsection. The commissioner's signature is, as a matter of law, made under the commissioner's oath of office and under penalties of perjury.

The certification form shall be as follows:

COUNTY ELECTION COMMISSIONER

PER DIEM CLAIM FORM

NAME: _____ COUNTY: _____

ADDRESS: _____ DISTRICT: _____

CITY: _____ ZIP: _____

DATE WORKED	BEGINNING TIME	ENDING TIME	PURPOSE OF WORK	APPLICABLE MS CODE SECTION	ACTUAL HOURS WORKED	PER DIEM DAYS EARNED

TOTAL NUMBER OF PER DIEM DAYS EARNED

EXCLUDING ELECTION DAYS _____

PER DIEM RATE PER DAY EARNED x $100.00

TOTAL NUMBER PER DIEM DAYS EARNED

FOR ELECTION DAYS _____

PER DIEM RATE PER DAY EARNED x $150.00

TOTAL AMOUNT OF PER DIEM CLAIMED $_____

I understand that I am signing this document under my oath as an election commissioner and under penalties of perjury.

I understand that I am requesting payment from taxpayer funds and that I have an obligation to be specific and truthful as to the amount of hours worked and the compensation I am requesting.

Signed this the ____ day of _____, ____,

_____

Commissioner's Signature

When properly completed and signed, the certification must be filed with the clerk of the county board of supervisors before any payment may be made. The certification will be a public record available for inspection and reproduction immediately upon the oral or written request of any person.

Any person may contest the accuracy of the certification in any respect by notifying the chair of the commission, any member of the board of supervisors or the clerk of the board of supervisors of the contest at any time before or after payment is made. If the contest is made before payment is made, no payment shall be made as to the contested certificate until the contest is finally disposed of. The person filing the contest shall be entitled to a full hearing, and the clerk of the board of supervisors shall issue subpoenas upon request of the contestor compelling the attendance of witnesses and production of documents and things. The contestor shall have the right to appeal de novo to the circuit court of the involved county, which appeal must be perfected within thirty (30) days from a final decision of the commission, the clerk of the board of supervisors or the board of supervisors, as the case may be.

Any contestor who successfully contests any certification will be awarded all expenses incident to his or her contest, together with reasonable attorney's fees, which will be awarded upon petition to the chancery court of the involved county upon final disposition of the contest before the election commission, board of supervisors, clerk of the board of supervisors, or, in case of an appeal, final disposition by the court. The commissioner against whom the contest is decided shall be liable for the payment of the expenses and attorney's fees, and the county shall be jointly and severally liable for same.

(11) Any election commissioner who has not received a certificate issued by the Secretary of State pursuant to Section 23-15-211 indicating that the election commissioner has received the required elections seminar instruction and that the election commissioner is fully qualified to conduct an election, shall not receive any compensation authorized by this section or Section 23-15-239.

HISTORY: Derived from 1972 Code § 23-5-79 [Codes, 1880, § 124; 1892, § 3635; 1906, § 4142; Hemingway's 1917, § 6776; 1930, § 6211; 1942, § 3239; Laws, 1968, ch. 570, § 1; Laws, 1970, ch. 506, § 24; Laws, 1979, ch. 487, § 1; Laws, 1983, ch. 423, §§ 1, 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 43; Laws, 1987, ch. 499, § 15; Laws, 1988, ch. 389, § 1; Laws, 1993, ch. 510, § 1; Laws, 1994, ch. 590, § 2; Laws, 2000, ch. 430, § 4; Laws, 2001, ch. 414, § 1; Laws, 2002, ch. 444, § 1; Laws, 2004, ch. 305, § 12; Laws, 2006, ch. 592, § 2; Laws, 2007, ch. 434, § 4; Laws, 2010, ch. 377, § 1; Laws, 2013, ch. 413, § 1; Laws, 2013, ch. 456, § 1; Laws, 2016, ch. 381, § 1; Laws, 2017, ch. 441, § 27, eff from and after July 1, 2017; Laws, 2018, ch. 399, § 2, eff from and after July 1, 2018; Laws, 2020, ch. 460, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment in (3), deleted "for" preceding "not to exceed" near the end; and in (4), inserted "primary, runoff" in the first sentence of (b), and added (c).

OPINIONS OF THE ATTORNEY GENERAL

Individual commissioners may perform preliminary work of identifying those individuals who have died, moved away or otherwise have become disqualified as voters without quorum of commissioners present; however, official act of removing names of those individuals who have, as matter of fact, become disqualified, must be taken by commission as whole or quorum thereof. Mitchell, Feb. 13, 1990, A.G. Op. #90-0089.

Statute which provides per diem for commissioners contemplates that commission as whole be in session; however, if commission determines that in order to fulfill its' statutory responsibilities it is necessary for individual commissioners to work when quorum is not present and county board of supervisors authorizes compensation for such work, individual commissioners would be entitled to compensation for such work. Mitchell, Feb. 13, 1990, A.G. Op. #90-0089.

Municipal election commissioners are required to meet on schedule set forth in statute as there are no specific statutory provisions setting forth dates that municipal election commissioners must meet. Mercer, July 17, 1990, A.G. Op. #90-0572.

Commissioners are to be paid per diem for any day in which they are engaged in statutory duties (revising registration books and pollbooks or conducting election), regardless of amount of time they actually work. Richardson, February 1, 1991, A.G. Op. #91-0048.

Once county election commission has made factual determination that voter has "removed" himself from his county of registration, commission has statutory duty and obligation to remove that voter's name from registration books and pollbooks, regardless of whether voter has signed cancellation form or registered in another county or state. Hutto, July 10, 1991, A.G. Op. #91-0455.

Miss. Code Section 23-15-153 provides for meeting of commissioners, revision of registration rolls and books, and compensation of commissioners at per diem allowance. Edens, May 12, 1993, A.G. Op. #93-0263.

Commissioner who works five or more hours in one day is paid $70.00 for that day with no carry over of any hours worked in excess of five hours, but commissioner may carry over hours if he works less than five hours on any particular day so that hours carried over would be added to hours of less than five worked on other days until a total of five hours is accumulated. Watts, July 14, 1993, A.G. Op. #93-0496.

There is no requirement that election commission or executive committees actually be in session and present with Registrar in order for Registrar to perform ministerial tasks and be entitled to appropriate compensation. Dixon, August 16, 1993, A.G. Op. #93-0575.

Section 23-15-153 applies to Municipal Voting Rolls in that same procedures may be employed to purge Municipal Voting Rolls. Zebert Sept. 15, 1993, A.G. Op. #93-0593.

There is no United States Department of Justice requirement that must be made regarding purging of municipal voter rolls; proper guidelines to follow are found in Section 23-15-153. Zebert Sept. 15, 1993, A.G. Op. #93-0593.

Municipalities can purge the voter rolls based on returned mass mailings unless federal election law applies. Exum-Petty, March 20, 1998, A.G. Op. #98-0149.

Any and all requests for access to or copies of county voter registration records must be made to the county registrar, and it is the duty and responsibility of the county registrar to insure that voters' social security numbers, telephone numbers, and dates of birth and age information are excluded prior to granting access or providing copies of such records. Johnson, March 10, 2000, A.G. Op. #2000-0112.

The purging duties of county election commissioners are subject to an annual limitation regardless of the number of regularly scheduled primary or general elections; they would be entitled to additional days for purging only for special elections except those conducted on the regular special election day in November; therefore, for purposes of compensation of county election commissioners for their purging duties, primary and general elections are not separate events in the sense

that would entitle commissioners to compensation in excess of the stated annual limitation on days. McLeod, Oct. 13, 2000, A.G. Op. #2000-0594.

Subsection (4) does not encompass primary elections because county election commissioners have no duties in the conduct of primaries. McLeod, Oct. 13, 2000, A.G. Op. #2000-0594.

The revision of the poll books for a primary election would entitle a county election commissioner to be compensated pursuant to subsection (2) subject to the annual limitation specified therein. McLeod, Oct. 13, 2000, A.G. Op. #2000-0594.

A per diem may be earned in one of two ways: first, a period of not less than five hours during a particular day would entitle a commissioner to a per diem; second, a period of less than five hours worked during a particular day may be carried forward and added to other periods of less than five hours. Once a total of five hours is accumulated over a period of two or more days, the commissioner would also be entitled to a per diem. McLeod, Oct. 13, 2000, A.G. Op. #2000-0594.

Any per diem earned for work in connection with revising primary election poll books will count against the annual limitation set forth in subsection (2); and, no per diem pursuant to subsection (4) can be earned with regard to a primary election because county election commissioners have no duties in the conduct of primaries. McLeod, Oct. 13, 2000, A.G. Op. #2000-0594.

A registrar must be actually employed in assisting election commissioners or party executive committees, either personally or through a deputy, for a minimum of five hours during a day or for a minimum of five hours accumulated over two or more days in order to claim a per diem; if a registrar, either personally or through a deputy, is actually employed in assisting both the democratic and republican executive committees for the requisite period during the same day, he or she would be entitled to claim two per diems. Butler, Nov. 3, 2000, A.G. Op. #2000-0667.

The number of per diem days county election commissioners may lawfully claim is that prescribed by House Bill 685 based on the population figures of the 2000 federal decennial census, provided that all hours worked are actually required, performed, and documented as required by law; there is no requirement to pro-rate the number of days for calendar year 2001 between the "old law" and the "new law." Scott, Sept. 21, 2001, A.G. Op. #01-0598.

The statute as it read on April 17, 2001 controlled as to the number of per diem days county election commissioners could lawfully claim, and House Bill 685 did not grant any additional days for the April 17 flag referendum or any other election conducted prior to June 13, 2001. Scott, Sept. 21, 2001, A.G. Op. #01-0598.

County election commissioners were entitled to claim per diem days for revising the registration books and pollbooks during calendar year 2001 up to the maximum number authorized by House Bill 685 even though the new law only became effective on June 13, 2001, provided that such purging was necessary and the work was performed and documented as required by law. Scott, Sept. 21, 2001, A.G. Op. #01-0598.

Performing one or more of various duties, such as training poll workers, appointing poll workers, distributing ballot boxes, having ballots printed, distributing ballots, and/or receiving and canvassing election returns, in connection with primary elections does not constitute performing official duties of a county election commission for which per diem is authorized pursuant to the statute. Robertson, Oct. 12, 2001, A.G. Op. #01-0638.

The Election Commissioners Association of Mississippi can lawfully sponsor one or more training events for its members, and election commissioners attending a training event sponsored by the association are entitled to receive a per diem provided a training certificate from the association is received and provided the six day limit is not exceeded. Phillips, Feb. 1, 2002, A.G. Op. #02-0026.

Individual election commissioners may be employed on a part-time basis by the board of supervisors to perform redistricting tasks provided the board determines, consistent with the facts that (1) the work involved is not required to be performed

by the registrar or deputy registrar; and (2) the work is over and above the regular statutory duties of the election commissioners. Martin, Jr., May 31, 2002, A.G. Op. #02-0326.

There is no authority for a county board of supervisors to election commission members for redistricting work over and above their regular "purging" duties. Young, Mar. 7, 2003, A.G. Op. #03-0096.

Even in the absence of a book listing persons who have been convicted of disqualifying crimes, the election commission is still responsible under subsection (1) of this section for removing disenfranchised felons from the voter rolls from other sources, such as the docket book in the Attorney General's office. Also, under 23-15-19, the circuit clerk as county registrar is required to erase from the registration records the name of any person convicted of any disenfranchising crime. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

With the exception of removing names of persons convicted of disqualifying crimes from the registration records by the circuit clerk, the election commission has sole authority for maintaining and purging the voter roll. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

There is nothing that allows a county board of supervisors to authorize per diem for election commissioners for days in excess of that provided for by this section. The mandate of the court for a hand recount of ballots must be met even if it means working beyond normal hours each of the remaining days. Porter, Dec. 10, 2004, A.G. Op. 04-0594.

Failure of a municipal election commission to properly purge registration books and poll books in accordance with Section 23-15-153 could result in the fraudulent use of the names of deceased voters or voters who have been otherwise disqualified to cast illegal votes which could affect the validity of the election. Noel, Apr. 5, 2005, A.G. Op. 05-0129.

Each county registrar must use sound discretion in determining whether the chairman of the election commission should be the only one other than the registrar to have a key to the room where voter registration records are stored. Reasonable hours of access to the room would be established by the circuit clerk, in his or her discretion. Griffith, Aug. 8, 2005, A.G. Op. 05-0378.

The work necessitated by municipal redistricting is not a part of the regular duties of municipal election commissioners. Therefore, the municipal governing authorities may employ and compensate individual county election commissioners or they may employ and compensate individual municipal election commissioners to perform such work. Jones, Aug. 19, 2005, A.G. Op. 05-0414.

Individual county election commissioners are entitled to per diem compensation pursuant to Section 23-15-153 for conducting demonstrations of Diebold voting machines. Robinson, Feb. 24, 2006, A.G. Op. 06-0065.

There is no statutory mandate as to where the election commission must meet to conduct other than official business; however, notice of any meeting that is not at a place and time specified by statute to conduct official business or discuss matters that may lead to the formulation of public policy must be given and the meeting must held in accordance with the State Open Meetings law. Wileman, May 26, 2006, A.G. Op. 06-0196.

Governing authorities may lawfully set the compensation of municipal election commissioners at the same rate and within the guidelines established by Section 23-15-153 for county election commissioners. Turnage, Sept. 15, 2006, A.G. Op. 06-0455.

A county election commission may continue to purge names from the registration books and poll books within 90 days of a regularly scheduled primary or general election with the exception that any program the purpose of which is to systematically remove the names of ineligible voters based on residency must be completed prior to 90 days prior to a regularly scheduled primary or general election. Jones, Dec. 8, 2006, A.G. Op. 06-0620.

The minutes of a county election commission should be available as a public record in the office of the circuit clerk. Jones, Dec. 8, 2006, A.G. Op. 06-0620.

§ 23-15-161. Attendance and assistance of county registrar at meeting of county election commissioners.

OPINIONS OF THE ATTORNEY GENERAL

Phrase "all needed assistance of which he is capable" is intended to encourage cooperation between registrar and election commissioners to insure that registration books and pollbooks contain only names of those individuals who meet statutory requirements of qualified elector. Horton, March 21, 1990, A.G. Op. #90-0201.

SUBARTICLE H.

COMPLIANCE WITH HELP AMERICA VOTE ACT OF 2002.

§ 23-15-169. Secretary of State to establish administrative complaint procedure for handling grievances.

OPINIONS OF THE ATTORNEY GENERAL

The Secretary of State has the authority to issue regulations regarding Help America Vote Act (HAVA) and the authority to expend HAVA funds, with the only restriction on the expenditure of funds for purchase of voting systems being that the systems comply with HAVA requirements. Simmons, Oct. 31, 2005, A.G. Op. 05-0442.

ARTICLE 5.

TIMES OF PRIMARY AND GENERAL ELECTIONS.

SUBARTICLE A.

MUNICIPAL ELECTIONS.

§ 23-15-171. Primary elections.

OPINIONS OF THE ATTORNEY GENERAL

Election of individuals to Democratic Municipal Executive Committee in 1986 was not matter of general knowledge among citizenry of Yazoo City, and temporary committee was established; individuals duly elected in 1986 to serve as municipal democratic executive committee had legal authority and responsibility to conduct 1990 municipal democratic primary election. Granberry, Jan. 30, 1990, A.G. Op. #90-0100.

Miss. Code Section 23-15-171 which requires that members of municipal party executive committees be elected implies that anyone who wishes to be member of executive committee must declare candidacy for membership; therefore, one who wishes to be candidate for membership on municipal party executive committee must express intention by filing with municipal clerk written statement of intent just as candidates for regular municipal offices are required to do by Miss. Code Section 23-15-309. Jackson, May 12, 1993, A.G. Op. #93-0292.

The standard for the payment of rent

for the use of a polling place is reasonableness, and municipal governing authorities may consider any factors deemed appropriate in arriving at an amount they deem to be reasonable. Brown, Sept. 26, 2003, A.G. Op. 03-0513.

Where only one person was elected to serve on a municipal party executive committee, it is suggested that the one duly elected member appoint another individual and that they together appoint an additional member and continue in that manner until a full complement of members comprise the committee. Magee, Dec. 1, 2004, A.G. Op. 04-0587.

No authority can be found in state law for a municipal party executive committee to remove one of its members on its own motion. Martin, Aug. 5, 2005, A.G. Op. 05-0409.

§ 23-15-173. General elections; applicability of this section and Section 23-15-171 to certain special or private charter municipalities.

OPINIONS OF THE ATTORNEY GENERAL

The standard for the payment of rent for the use of a polling place is reasonableness, and municipal governing authorities may consider any factors deemed appropriate in arriving at an amount they deem to be reasonable. Brown, Sept. 26, 2003, A.G. Op. 03-0513.

SUBARTICLE B.

OTHER ELECTIONS.

§ 23-15-191. Primary elections.

OPINIONS OF THE ATTORNEY GENERAL

Where a candidate received more than half of the total votes cast for all three candidates in a primary election, he had a majority of the votes as contemplated by this this section and § 23-15-305. Tate, Aug. 14, 2003, A.G. Op. 03-0453.

§ 23-15-193. Officers to be elected at general state election.

OPINIONS OF THE ATTORNEY GENERAL

An incumbent supervisor may continue to serve until such time as a successor is lawfully elected and qualified in accordance with a court ordered special election, assuming that a court has not ordered otherwise. Griffith, Dec. 28, 1999, A.G. Op. #99-0698.

ARTICLE 7.

ELECTION OFFICIALS.

Sec.

23-15-227. Compensation of poll managers.
23-15-229. Compensation of municipal poll managers and other workers.
23-15-235. Appointment of additional poll managers.

§ 23-15-211. Composition and duties of State Board of Election Commissioners; elections training seminar; certification of seminar participants; compensation of commissioners attending seminar; authorization by Secretary of State of additional training days.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 23-15-211 provides for appointment of Municipal Election Commissioners. Edens, May 12, 1993, A.G. Op. #93-0263.

While one of the authorized training events for which commissioners may receive a per diem must be a seminar sponsored by the Secretary of State, other training events may be sponsored by other entities; thus, the Election Commissioners Association of Mississippi can lawfully sponsor one or more training events for its members. Phillips, Feb. 1, 2002, A.G. Op. #02-0026.

§ 23-15-211.1. Secretary of State designated Mississippi's chief election officer; chief election officer to gather certain information regarding elections; annual report on voter participation.

OPINIONS OF THE ATTORNEY GENERAL

Statutory requirements applicable to the acquisition of computer equipment and services are also applicable to the acquisition of computer equipment and services necessary to implement a computerized statewide voter registration system under the Help America Vote Act (HAVA). However, acquisitions of computer equipment and services approved by ITS in order to implement a computerized voter registration system under HAVA will also have to be approved by the Secretary of State. Bearman, July 27, 2004, A.G. Op. 04-0340.

§ 23-15-213. Election of county election commissioners.

OPINIONS OF THE ATTORNEY GENERAL

Where Court ruled that county-wide elections for post of Election Commissioners for Simpson County were enjoined, appropriate officials must proceed to fill vacancy on Simpson County Election Commission due to death of previous Election Commissioner, provided that this would be acceptable to U.S. District Court for Southern District of Mississippi which retains jurisdiction over issue of how elections for election commissioners shall be conducted. Welch, August 2, 1990, A.G. Op. #90-0553.

§ 23-15-215. Performance by board of supervisors of election commissioners' duties.

OPINIONS OF THE ATTORNEY GENERAL

As long as the election commission performs its statutory duties, nothing can be found that gives board of supervisors any authority regarding the day-to-day opera-

tion of the commission. Jones, Dec. 8, 2006, A.G. Op. 06-0620.

§ 23-15-217. County election commissioner authorized to be candidate for other office; resignation from office; duties and powers of board of supervisors where election of county election commissioner is contested.

OPINIONS OF THE ATTORNEY GENERAL

A municipal election commissioner may seek an elective municipal office provided he resigns as commissioner before January 1 of the year he desires to seek said elective office. Keyes, Dec. 13, 1991, A.G. Op. #91-0907.

Municipal election commissioner may seek elective municipal office, provided he resigns as commissioner before January 1 of the year he desires to seek said office. Barnett, Feb. 19, 1992, A.G. Op. #91-0074.

Election commissioner is not prohibited from performing his or her statutory duties when commissioner's spouse is candidate, and election commissioner whose spouse is candidate would not be prevented from participating with other commissioners in carrying out commission's statutory responsibilities in connection with elections. Kilpatrick, Oct. 30, 1992, A.G. Op. #91-0853.

Election commissioner must recuse him- or herself from participation in any such decisions that must be made with respect to the election of a commissioner in commissioner's supervisor district when he or she is candidate for re-election; if remaining commissioners are evenly divided on whether or not particular affidavit ballot should be counted, board of supervisors would have to make ruling. Evans, Nov. 25, 1992, A.G. Op. #92-0899.

The resignation of an election commissioner must be given to the board of supervisors prior to January 1, 1999, in order for the commissioner to be eligible to seek an elected office other than election commissioner during 1999. Smart, December 18, 1998, A.G. Op. #98-0750.

The failure of a person appointed to the position of municipal election commissioner to take the oath of office results in the failure of that person to become fully qualified to assume the position, thus creating a vacancy; there was no need for the person to submit a letter of resignation. Minor, Mar. 18, 2005, A.G. Op. 05-0126.

§ 23-15-219. Employment by board of election commissioners of investigators, legal counsel and others.

OPINIONS OF THE ATTORNEY GENERAL

The statute specifically authorizes the election commission, with the approval of the board of supervisors, to employ and compensate its members to perform work that enables the commission to carry out its own duties. Wright-Hart, September 11, 1998, A.G. Op. #98-0548.

Because the employment of a hearing officer by the county election commission to preside over an election contest convened under § 23-15-963 (1) did not have the statutorily required approval of the County Board of Supervisors, no compensation would be authorized. Griffith, Oct. 31, 2003, A.G. Op. 03-0554.

§ 23-15-221. Appointment and duties of municipal election commissioners; election by municipality to abolish municipal election commissioners in the municipality's county; municipal election commissioners' duties assumed by county election commissioners.

OPINIONS OF THE ATTORNEY GENERAL

There is no specific prohibition against a county executive committee member from serving as a municipal election commissioner, but it would give the appearance of impropriety for a municipal election commissioner to be identified with a particulars group of nominees. Pechloff, January 9, 1998, A.G. Op. #97-0803.

The statute contains no provision expressly stating that it is applicable to special or private charter municipalities and, therefore, a city charter provision specifying the number of election commissioners controlled over the statute. Artman, Jr., Mar. 30, 2001, A.G. Op. #01-0177.

A county or municipal election commission may enter a written agreement with a county or municipal party executive committee to perform various duties in connection with a primary election such as training poll workers, appointing poll workers, distributing ballot boxes, having ballots printed, distributing ballots, and receiving and canvassing election returns; however, there is no authority that would allow a county election commission to conduct a municipal election. Cochran, Aug. 13, 2002, A.G. Op. #02-0535.

If the increased revenue in a school district's budget was derived solely from the expansion of its ad valorem tax base, there was no violation of subsection (1) of this section; however, an amount is referenced in the ad valorem tax request worksheet as a "new program" was not derived solely from the expansion of the district's ad valorem tax base and, therefore, this increase in dollars must be advertised and the failure to do so requires exclusion of this amount when setting the millage rate to fund the school board's budget. Perkins, Sept. 11, 2002, A.G. Op. #02-0536.

§ 23-15-225. Compensation of registrars.

HISTORY: Derived from 1972 Code § 23-5-53 [Codes, 1880, § 116; 1892, § 3622; 1906, § 4129; Hemingway's 1917, § 6763; 1930, § 6195; 1942, § 3223; Laws, 1964, ch. 510, § 1; Laws, 1977, ch. 335; Laws, 1981, ch. 500, § 1; Laws, 1983, ch. 519; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 61; Laws, 1991, ch. 440, § 6; Laws, 1997, ch. 570, § 7; Laws, 2008, ch. 473, § 2; brought forward without change, Laws, 2016, ch. 326, § 4; Laws, 2017, ch. 441, § 44, eff from and after July 1, 2017; brought forward without change, Laws, 2018, ch. 399, Laws, 2018, ch. 399, § 5, eff from and after July 1, 2018; Laws, 2019, ch. 485, § 2, eff from and after Jan. 1, 2020.

Editor's Notes — 2019 Laws of 2019, ch. 485, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after January 1, 2020, except for Section 11, which shall take effect and be in force from and after July 1, 2019, and Sections 12 and 13, which shall take effect and be in force from and after the passage of this act [April 18, 2019]."

Amendment Notes — The 2019 amendment, effective January 1, 2020, in (1), made the following substitutions: "Thirty-one Thousand Three Hundred Ninety-five Dollars ($31,395.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00)" for "Twenty-nine Thousand Nine Hundred Dollars ($29,900.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00)" in (a), "Twenty-six Thousand Five Hundred Sixty-five Dollars ($26,565.00), but not less than Nine Thousand Six Hundred

Sixty Dollars ($9,660.00)" for "Twenty-five Thousand Three Hundred Dollars ($25,300.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00)" in (b), "Twenty-four Thousand One Hundred Fifty Dollars ($24,150.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00)" for "Twenty-three Thousand Dollars ($23,000.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00)" in (c), "Twenty-one Thousand Seven Hundred Thirty-five Dollars ($21,735.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00)" for "Twenty Thousand Seven Hundred Dollars ($20,700.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00)" in (d), "Nineteen Thousand Three Hundred Twenty Dollars ($19,320.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00)" for "Eighteen Thousand Four Hundred Dollars ($18,400.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00)" in (e), "Sixteen Thousand Nine Hundred Five Dollars ($16,905.00), but not less than Nine Thousand Six Hundred Sixty Dollars ($9,660.00)" for "Sixteen Thousand One Hundred Dollars ($16,100.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00)" in (f), "Fourteen Thousand Four Hundred Ninety Dollars ($14,490.00), but not less than Eight Thousand Four Hundred Fifty-two Dollars and Fifty Cents ($8,452.50)" for "Thirteen Thousand Eight Hundred Dollars ($13,800.00), but not less than Eight Thousand Fifty Dollars ($8,050.00)" in (g), "Twelve Thousand Seventy-five Dollars ($12,075.00), but not less than Eight Thousand Four Hundred Fifty-two Dollars and Fifty Cents ($8,452.50)" for "Eleven Thousand Five Hundred Dollars ($11,500.00), but not less than Eight Thousand Fifty Dollars ($8,050.00)" in (h), and "Nine Thousand Six Hundred Sixty Dollars ($9,660.00) but not less than Six Thousand Six Hundred Forty-one Dollars and Twenty-five Cents ($6,641.25)" for "Nine Thousand Two Hundred Dollars ($9,200.00) but not less than Six Thousand Three Hundred Twenty-five Dollars ($6,325.00)" in (i).

OPINIONS OF THE ATTORNEY GENERAL

Even though county registrars are not entitled to compensation over and above what has been set by their respective boards of supervisors for maintaining extended office hours for registration and absentee balloting purposes, the compensation of a regular county employee who is also a deputy registrar and who is given the additional responsibility of registering voters during extended hours can be increased at the discretion of the board of supervisors. Griffin, Feb. 12, 1992, A.G. Op. #91-0957.

County registrars may lawfully receive more than one per diem for the same day for their assistance of certain entities in election activities, provided that the registrar, either personally or through a deputy, actually performs required and necessary duties in assisting each entity. Griffin, Feb. 12, 1992, A.G. Op. #91-0957.

Time and work required to transfer the names of registered voters to a newly established automated voter registration system is a single, unique occurrence, and county boards of supervisors are authorized to approve a one time additional payment for the Registrar or some qualified individual designated by the Registrar for performing this task. Griffin, Feb. 12, 1992, A.G. Op. #91-0957.

There is no requirement that election commission or executive committees actually be in session and present with registrar in order for registrar to perform ministerial tasks and be entitled to appropriate compensation. Ruffin, Dec. 23, 1992, A.G. Op. #92-0932.

Miss. Code Section 23-15-225 provides that city clerk of every municipality shall be appointed as deputy registrar. Edens, May 12, 1993, A.G. Op. #93-0263.

In setting election clerk's compensation, governing authorities should take into consideration fact that clerk is required by statute to perform various duties relating to municipal registrar; Miss. Code Section 23-15-225 (6) specifically provides for additional compensation for performance of duties relating to mail-in voter registration. Edens, May 12, 1993, A.G. Op. #93-0263.

It is implicit in this section that circuit clerks may, upon request from the execu-

tive committee of the party, assist the executive committee with its duties in the conduct of the election (circuit clerk may receive compensation for services in assisting the election commissioners, executive committees or boards of supervisors in connection with any election); thus, although the circuit clerk may assist the executive committee in the conduct of an election, the duty and responsibility of the election remains with the executive committee and is nondelegable. White, July 30, 1999, A.G. Op. #99-0323.

Individual election commissioners may be employed on a part-time basis by the board of supervisors to perform redistricting tasks provided the board determines, consistent with the facts that (1) the work involved is not required to be performed by the registrar or deputy registrar; and (2) the work is over and above the regular statutory duties of the election commissioners. Martin, Jr., May 31, 2002, A.G. Op. #02-0326.

Circuit clerks may claim the same number of statutory days for assisting county executive committees as they claim for assisting county election commissions. Mitchell, May 12, 2006, A.G. Op. 06-0191.

§ 23-15-227. Compensation of poll managers.

(1) The poll managers shall be each entitled to Seventy-five Dollars ($75.00) for each election; however, the board of supervisors may, in its discretion, pay the poll managers an additional amount not to exceed Fifty Dollars ($50.00) per election.

(2) The board of supervisors may, in its discretion, pay the poll managers an additional amount not to exceed Fifty Dollars ($50.00) per any election occurring from July 1, 2020, through December 31, 2020, which shall be considered additional pandemic pay.

(3) The poll manager who shall carry to the place of voting, away from the courthouse, the official ballots, ballot boxes, pollbooks and other necessities, shall be allowed Ten Dollars ($10.00) for each voting precinct for so doing. The poll manager who acts as returning officer shall be allowed Ten Dollars ($10.00) for each voting precinct for that service. If a person who performs the duties described in this subsection uses a privately owned motor vehicle to perform them, he or she shall receive for each mile actually and necessarily traveled in excess of ten (10) miles, the mileage reimbursement rate allowable to federal employees for the use of a privately owned vehicle while on official travel.

(4) The compensation authorized in this section shall be allowed by the board of supervisors, and shall be payable out of the county treasury; provided, however, that any compensation for additional pandemic pay due to a public health emergency may be payable from federal funds available for such purpose, or a combination of both county and federal funding sources.

(5) The compensation provided in this section shall constitute payment in full for the services rendered by the persons named for any election, whether there be one (1) election or issue voted upon, or more than one (1) election or issue voted upon at the same time.

(6) The Secretary of State shall promulgate rules and regulations as are necessary to ensure the safety of poll managers, election commissioners, electors and their families at the voting precincts during a COVID-19 public health risk or other public health risk declared by the Governor where the

appearance of such persons may result in exposure to such risk or the exposure of other persons to such risk.

HISTORY: Derived from 1972 Code § 23-5-183 [Codes, 1892, § 3706; 1906, § 4213; Hemingway's 1917, § 6849; 1930, § 6257; 1942, § 3286; Laws, 1932, ch. 298; Laws, 1938, ch. 306; Laws, 1950, ch. 281; Laws, 1960, ch. 452, § 1; Laws, 1966 ch. 614, § 1; Laws, 1970, ch. 511, § 1; Laws, 1973, ch. 401 § 1; Laws, 1975, ch. 497, § 2; Laws, 1979, ch. 487, § 3; Laws, 1983, ch. 510; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 62; Laws, 1987, ch. 499, § 16; Laws, 1988 ch. 402, § 1; Laws, 1995, ch. 446, § 1; Laws, 2007, ch. 434, § 5; Laws, 2013, ch. 366, § 1; brought forward without change, Laws, 2016, ch. 326, § 5; Laws, 2017, ch. 441, § 45, eff from and after July 1, 2017; Laws, 2020, ch. 460, § 2, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment added (2); redesignated former (2) through (4) as (3) through (5); in (4), added the proviso at the end; and added (6).

OPINIONS OF THE ATTORNEY GENERAL

There is no statutory prohibition against individual being independently appointed to serve as pollworker in two different primary elections being conducted simultaneously, although pollworkers are not entitled to additional compensation for working in more than one election on same day. Mosley, July 2, 1992, A.G. Op. #92-0465.

In regard to poll workers, Miss. Code Section 23-15-231 provides for appointment of "election managers" by Election Commission; such managers are entitled, under Miss. Code Section 23-15-227, to $50 for each election; such election managers, or poll workers, are therefore employees for purposes of Workers' Compensation coverage. Trapp, Mar. 12, 1993, A.G. Op. #93-0133.

Miss. Code Section 23-15-227 provides for $50 per election as compensation of election commissioners, managers, clerks and other persons. Edens, May 12, 1993, A.G. Op. #93-0263.

§ 23-15-229. Compensation of municipal poll managers and other workers.

The compensation for poll managers and other workers in the polling places of a municipality shall be the same as the compensation paid by the county for those services; provided, however, that the governing authorities of a municipality shall not be required to pay any additional compensation authorized by the board of supervisors. The governing authorities of a municipality may, in their discretion, pay clerks and poll managers in the polling places of the municipality an additional amount of compensation not to exceed Fifty Dollars ($50.00) per election and may pay clerks and poll managers in the polling places of the municipality an additional amount of compensation not to exceed Fifty Dollars ($50.00) per any election which occurs from July 1, 2020, through December 31, 2020, which shall be considered additional pandemic pay. Such compensation shall be payable out of the county general fund, and may be payable from federal funds available for such purpose, or a combination of both funding sources.

HISTORY: Derived from 1972 Code § 23-5-184 [Laws, 1973, ch. 346, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 63; Laws, 1995,

ch. 446, § 2; Laws, 2016, ch. 326, § 1; Laws, 2017, ch. 441, § 46, eff from and after July 1, 2017; Laws, 2020, ch. 460, § 3, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, in the second sentence, added "and may pay clerks and poll managers...additional pandemic pay"; and added the last sentence.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 23-15-229 provides for compensation of municipal clerks, managers and other workers, and states that compensation for clerks, managers and other workers in polling place shall be same as compensation paid by county for such services. Edens, May 12, 1993, A.G. Op. #93-0263.

Miss. Code Section 23-15-229 provides for compensation of municipal clerks, managers and other workers, and states that compensation for clerks, managers and other workers in polling place shall be same as compensation paid by county for such services. Edens, May 12, 1993, A.G. Op. #93-0263.

Even though heading or title of Miss. Code Section 23-15-229 uses terms "municipal clerks, managers and other workers", compensation provided for this statutory section is for "clerks, managers and other workers in the polling places"; this section is clearly referring to poll workers who have historically been designated election clerks and managers, and would not be applicable to municipal clerk. Edens, May 12, 1993, A.G. Op. #93-0263.

§ 23-15-235. Appointment of additional poll managers.

In addition to the poll managers appointed pursuant to Section 23-15-231, for the first five hundred (500) registered voters in each voting precinct, the election commissioners may, in their discretion, appoint not more than three (3) persons to serve as poll managers of the election. The election commissioners may, in their discretion, appoint additional persons to serve as poll managers for each one thousand (1,000) registered voters or fraction thereof in each voting precinct above the first five hundred (500), as determined necessary by the election commissioners and approved by the board of supervisors. Any person appointed as poll manager shall be a qualified elector of the county in which the voting precinct is located.

HISTORY: Derived from 1972 Code § 23-5-103 [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, § 369; 1880, § 135; 1892, § 3645; 1906, § 4152; Hemingway's 1917, § 6786; 1930, § 6216; 1942, § 3245; Laws, 1980, ch. 486, § 2; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 66; Laws, 2017, ch. 441, § 49, eff from and after July 1, 2017; Laws, 2020, ch. 362, § 1, eff from and after July 1, 2020.

Amendment Notes — The 2020 amendment, rewrote the second sentence, which read: "The election commissioners may, in their discretion, appoint three (3) additional persons to serve as poll managers for each one thousand (1,000) registered voters or fraction thereof in each voting precinct above the first five hundred (500), not to exceed six (6) additional poll managers under this section."

OPINIONS OF THE ATTORNEY GENERAL

Sections 23-15-231 and 23-15-235 do not provide authority for the board of supervisors to pay pollworkers to be placed at closed voting precincts in order to direct voters to a different voting location. However, Section 19-3-40 gives the board of supervisors the authority to hire an individual to be at a closed polling place and give directions. Yancey, June 2, 2006, A.G. Op. 06-0229.

§ 23-15-239. Mandatory training of poll managers; single, comprehensive poll manager training program; certified poll managers.

OPINIONS OF THE ATTORNEY GENERAL

County boards of supervisors have the discretionary authority to compensate qualified electors of the county who are duly appointed to serve as pollworkers in a primary election and attend one or more training sessions conducted by a county party executive committee. Scott, Feb. 18, 2000, A.G. Op. #2000-0067.

Because the terms "poll worker" and "manager" are interchangeable as used in the election statute, therefore, a county board of supervisors has the discretionary authority to compensate poll workers for attending certification classes pursuant to Section 23-15-239 (3). Meadows, Jan. 31, 2003, A.G. Op. #03-0033.

§ 23-15-241. Election bailiff to keep peace.

OPINIONS OF THE ATTORNEY GENERAL

People gathering signatures on petitions that are not covered by § 23-17-57(4) may be within 150 feet of the entrance of a polling place but not within 30 feet of any room in which an election is being held; however, it is the duty of the election bailiff to insure that anyone collecting signatures does not, in any manner, impede the progress of voters coming into a polling place to vote. Sanford, Feb. 1, 2002, A.G. Op. #02-0028.

§ 23-15-245. Duties of election bailiff; polls to be open and clear.

OPINIONS OF THE ATTORNEY GENERAL

People gathering signatures on petitions that are not covered by § 23-17-57(4) may be within 150 feet of the entrance of a polling place but not within 30 feet of any room in which an election is being held; however, it is the duty of the election bailiff to insure that anyone collecting signatures does not, in any manner, impede the progress of voters coming into a polling place to vote. Sanford, Feb. 1, 2002, A.G. Op. #02-0028.

§ 23-15-259. Authority of boards of supervisors to allow compensation of officers rendering services in registration and elections and reasonable sum to supply voting compartments, tables and shelves.

OPINIONS OF THE ATTORNEY GENERAL

Purging of voter rolls of names of persons who have not voted in state, county, or federal election in last four (4) years is not applicable to municipal election commissions; municipal election commissions are required to keep and use suspended or "inactive" list compiled and provided by county election commission in order to remove or restore suspended voters. Sautermeister, March 15, 1990, A.G. Op. #90-0183.

A board of supervisors does not have the responsibility to provide or make available the various county polling places within the county precincts for use by a political party for a caucus. However, in the event the board makes space available in public facilities to other organizations, it can make space available on the same basis for conducting caucuses. Welch, May 7, 2004, A.G. Op. 04-0169.

§ 23-15-263. Duties of county executive committees at primary elections.

OPINIONS OF THE ATTORNEY GENERAL

A member of a municipal party executive committee may be a candidate for county or state office and remain on said municipal committee without violation of statute. Denny, May 12, 1992, A.G. Op. #92-0369.

It is the duty of the executive committee of the political party to determine whether an individual is in fact qualified for the office sought and whether the individual should be placed on the ballot for the party primary. Evans, July 9, 1999, A.G. Op. #99-0346.

§ 23-15-266. Executive committee authorized to enter into agreements regarding conduct of elections if certain criteria met.

OPINIONS OF THE ATTORNEY GENERAL

Agreements between an election commission and a party executive committee as authorized by the statute for the performance of one or more of various duties, such as training poll workers, appointing poll workers, distributing ballot boxes, having ballots printed, distributing ballots, and/or receiving and canvassing election returns, in connection with primary elections may contain provisions whereby the executive committee agrees to compensate commissioners. Robertson, Oct. 12, 2001, A.G. Op. #01-0638.

ARTICLE 9.

SUPERVISOR'S DISTRICTS AND VOTING PRECINCTS.

Sec.

23-15-281. Fixing supervisors districts, voting precincts and voting places; purchase of property and construction, repair, renovation, maintenance, etc. of polling places; availability of facilities for use as polling place.
23-15-283. Alteration of boundaries.
23-15-285. Entry of boundaries and alterations thereto on minutes of board of supervisors; limit on number of voters within each precinct or ballot box.

§ 23-15-281. Fixing supervisors districts, voting precincts and voting places; purchase of property and construction, repair, renovation, maintenance, etc. of polling places; availability of facilities for use as polling place.

(1) Each county shall be divided into supervisors districts, which shall be the same as those for the election of members of the board of supervisors, and may be subdivided thereafter into voting precincts; and there shall be only one (1) voting place in each voting precinct. The board of supervisors shall notify the Office of the Secretary of State of the boundary of each supervisors district, sub-precinct and voting precinct as then fixed and shall provide the office a legal description and a map of each supervisors district, sub-precinct and voting precinct and shall indicate the voting place in each such district. The board of supervisors shall also ensure the legal description and map of each supervisors district is available in the circuit clerk's office for public inspection.

(2) The board of supervisors is authorized, by order spread upon the minutes of the board setting forth the cost and source of funds therefor, to purchase improved or unimproved property and to construct, reconstruct, repair, renovate and maintain polling places, or to pay to private property owners reasonable rental fees when the property is used as a polling place for a period not to exceed the day immediately preceding the election, the day of the election, and the day immediately following the election. On or before May 1, 2019, the county board of supervisors shall ensure each polling place is accessible to all voters, structurally sound, capable of providing air conditioning and heating and compliant with the Americans with Disabilities Act.

(3) All facilities owned or leased by the state, county, municipality, or school district may be made available at no cost to the board of supervisors for use as polling places to such extent as may be agreed to by the authority having control or custody of these facilities.

HISTORY: Derived from 1972 Code § 23-5-9 [Codes, 1880, § 102; 1892, § 3604; 1906, § 4100; Hemingway's 1917, § 6744; 1930, § 6179; 1942, § 3207; Laws, 1980, ch. 425 § 2; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 84; Laws, 2017, ch. 441, § 66, eff from and after July 1, 2017; Laws, 2019, ch. 340, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (1), deleted the former second sentence, which read: "Provided, however, that such boundaries, if altered, shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation except county lines and municipal corporate limits," and inserted "sub-precinct" twice in the next-to-last sentence.

OPINIONS OF THE ATTORNEY GENERAL

Both Democratic and Republican primaries are to be held at regularly designated polling place in each precinct; there is no prescribed distance by which primaries of different parties must be separated. Mosley, July 2, 1992, A.G. Op. #92-0465.

§ 23-15-283. Alteration of boundaries.

(1) The board of supervisors shall have power to alter the boundaries of the supervisors districts, voting precincts, sub-precincts and the voting place therein. If the board of supervisors orders a change in the boundaries, they shall notify the election commissioners, who shall at once cause the voter rolls as electronically maintained by the Statewide Elections Management System of voting precincts affected by the order to be changed to conform to the change so as to contain only the names of the qualified electors in the voting precincts as made by the change of boundaries. Upon the order of change in the boundaries of any voting precinct or the voting place therein, the board of supervisors shall notify the Office of the Secretary of State and provide the Office of the Secretary of State a legal description and a map of any boundary change. No change shall be implemented or enforced until the requirements of this section have been met.

(2) Only officials certified by the Secretary of State shall be authorized to implement boundary line changes in the Statewide Elections Management System. The training and certification required under this subsection (2) shall be available to the circuit clerk, county election commissioners or any other individual designated by the board of supervisors to be responsible for implementing boundary line changes into the Statewide Elections Management System.

(3) Any governmental entity authorized to adopt, amend or change boundary lines shall immediately forward all changed boundary lines to the appropriate circuit clerk, who shall, if authorized under subsection (2), implement the boundary line changes in the Statewide Elections Management System. If the circuit clerk is not the appropriate person to implement the boundary line changes, the clerk shall immediately forward a copy of all materials to the appropriate person. Copies of any boundary line changes within the county shall be maintained in the office of the circuit clerk and made available for public inspection. No change shall be implemented or enforced until the requirements of this section have been met.

(4) Precinct boundary changes affected by the authority of this section or of any other provision of law shall not be implemented during any decade after

the last day of September of the year ending in eight (8). Precinct boundaries in force and effect at such time shall remain in effect and unalterable until the last day of December in the next year ending in zero. This prohibition shall not bar the creation or modification of sub-precinct boundaries.

HISTORY: Derived from 1972 Code § 23-5-11 [Codes, 1880, § 110; 1892, § 3605; 1906, § 4111; Hemingway's 1917, § 6745; 1930, § 6180; 1942, § 3208; Laws, 1980, ch. 425, § 3; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 85; Laws, 2008, ch. 528, § 6; Laws, 2017, ch. 441, § 67, eff from and after July 1, 2017; Laws, 2019, ch. 340, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment inserted "sub-precincts" in the first sentence of (1); and added (4).

OPINIONS OF THE ATTORNEY GENERAL

Individual election commissioners may be employed on a part-time basis by the board of supervisors to perform redistricting tasks provided the board determines, consistent with the facts that (1) the work involved is not required to be performed by the registrar or deputy registrar; and (2) the work is over and above the regular statutory duties of the election commissioners. Martin, Jr., May 31, 2002, A.G. Op. #02-0326.

Failure to file a map or description of the new districts for a county with the Secretary of State's office does not prohibit the circuit clerk and/or the election commission from implementing the new supervisor, school board, and justice court election district. Dillon, Aug. 1, 2003, A.G. Op. 03-0387.

§ 23-15-285. Entry of boundaries and alterations thereto on minutes of board of supervisors; limit on number of voters within each precinct or ballot box.

The board of supervisors shall cause an entry to be made on the minutes of the board at some meeting, as early as convenient, defining the boundaries of the several supervisors districts, sub-precincts and voting precincts in the county, and designating the voting place in each voting precinct; and as soon as practicable after any change is made in any supervisors district, sub-precincts, voting precinct or any voting place, the board of supervisors shall cause the change to be entered on the minutes of the board in such manner as to be easily understood. Precinct boundaries may be changed only during the times provided in Section 23-15-283.

No voting precinct shall have more than five hundred (500) qualified electors residing in its boundaries. Subject to the provisions of this section, each board of supervisors of the various counties of this state shall as soon as practical after January 1, 1987, alter or change the boundaries of the various voting precincts to comply herewith and shall from time to time make such changes in the boundaries of voting precincts so that there shall never be more than five hundred (500) qualified electors within the boundaries of the various voting precincts of this state; provided further, this limitation shall not apply to voting precincts that are so divided, alphabetically or otherwise, so as to

have less than five hundred (500) qualified electors in any one (1) box within a voting precinct. However, the limitation of five hundred (500) qualified electors to the voting precinct shall not apply to voting precincts in which voting machines are used at all elections held in that voting precinct. No change in any supervisors district, sub-precinct or voting precinct shall take effect less than thirty (30) days before the qualifying deadline for the office of county supervisor.

HISTORY: Derived from 1972 Code § 23-5-13 [Codes, 1880, § 103; 1892, § 3606; 1906, § 4112; Hemingway's 1917, § 6746; 1930, § 6181; 1942, § 3209; Laws, 1964, ch. 509, § 1; Laws, 1980, ch. 425, § 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 86; Laws, 2012, ch. 353, § 1; Laws, 2017, ch. 441, § 174, eff from and after July 1, 2017; Laws, 2019, ch. 340, § 3, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in the first paragraph, inserted "sub-precincts" twice in the first sentence, rewrote the former second sentence, which read: "The changed boundaries shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation, with the exception of county lines and municipal corporate limits"; and in the second paragraph, inserted "sub-precinct" in the present last sentence, and deleted the former last two sentences, which read: "Any change in any boundary of a supervisors district or voting precinct that is approved under the Voting Rights Act of 1965 less than thirty (30) days before such qualifying deadline shall be effective only for an election for county supervisor held in a year following the year in which such change is approved under the Voting Rights Act of 1965. Provided, however, that, with the exception of county lines and municipal corporate limits, such altered boundaries shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation."

ARTICLE 11.

NOMINATIONS.

Sec.

23-15-299. Time for payment of fee; written statement to accompany fee; recordation and disbursement of fee; determination of candidate's qualifications; declaration of nominee in single candidate race.

23-15-300. Residency requirements for certain candidates for municipal, county or county district offices; applicability of section.

§ 23-15-297. Fee required to be paid upon entering race for party nomination.

OPINIONS OF THE ATTORNEY GENERAL

Candidates entering race for party nominations for appellate court judge pay $200 fee to secretary of appropriate state executive committee. Harvey Aug. 25, 1993, A.G. Op. #93-0572.

§ 23-15-299. Time for payment of fee; written statement to accompany fee; recordation and disbursement of fee; determination of candidate's qualifications; declaration of nominee in single candidate race.

(1)(a) Assessments made pursuant to paragraphs (a), (b) and (c) of Section 23-15-297 shall be paid by each candidate who seeks a nomination in the political party election to the secretary of the state executive committee with which the candidate is affiliated by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. If March 1 or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (a) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday.

(b) Assessments made pursuant to paragraphs (a), (b) and (c) of Section 23-15-297 shall be paid by each independent candidate or special election candidate to the Secretary of State by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. If March 1 or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (b) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday.

(2)(a) Assessments made pursuant to paragraphs (d) and (e) of Section 23-15-297, shall be paid by each candidate who seeks a nomination in the political party election to the circuit clerk of that candidate's county of residence by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the election for the office is held. If March 1 or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (a) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday. The circuit clerk shall forward the fee and all necessary information to the secretary of the proper county executive committee within two (2) business days. No candidate may attempt to qualify with any political party that does not have a duly organized county executive committee, and the circuit clerk shall not accept any assessments paid for nonlegislative offices pursuant to paragraphs (d) and (e) of Section 23-15-297 if the circuit clerk does not have contact information for the secretary of the county executive committee for that political party.

(b) Assessments made pursuant to paragraphs (d) and (e) of Section 23-15-297 shall be paid by each independent candidate or special election candidate to the circuit clerk of that candidate's county of residence by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. If March 1 or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (b) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday. The circuit clerk shall forward the fee and all necessary information to the secretary of the proper county election commission within two (2) business days.

(3)(a) Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297 must be paid by each candidate who seeks a nomination in the political party election to the secretary of the state executive committee with which the candidate is affiliated by 5:00 p.m. sixty (60) days before the presidential preference primary in years in which a presidential preference primary is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297, in years when a presidential preference primary is not being held, shall be paid by each candidate who seeks a nomination in the political party election to the secretary of the state executive committee with which the candidate is affiliated by 5:00 p.m. on March 1 of the year in which the primary election for the office is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. If sixty (60) days before the presidential preference primary in years in which a presidential preference primary is held, March 1, or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (a) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday.

(b) Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297 must be paid by each independent candidate or special election candidate to the Secretary of State by 5:00 p.m. sixty (60) days before the presidential preference primary in years in which a presidential preference primary is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297, in years when a presidential preference primary is not being held, shall be paid by each independent candidate or special election candidate to the Secretary of State by 5:00 p.m. on March 1 of the year in which the primary election for the office is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. If sixty (60) days

before the presidential preference primary in years in which a presidential preference primary is held, March 1, or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (b) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday.

(4)(a) The fees paid pursuant to subsections (1), (2) and (3) of this section shall be accompanied by a written statement containing the name and address of the candidate, the party with which he or she is affiliated, if applicable, the email address of the candidate, if any, and the office for which he or she is a candidate.

(b) The state executive committee shall transmit to the Secretary of State a copy of the written statements accompanying the fees paid pursuant to subsections (1) and (2) of this section. All copies must be received by the Office of the Secretary of State by not later than 6:00 p.m. on the date of the qualifying deadline; provided, however, the failure of the Office of the Secretary of State to receive such copies by 6:00 p.m. on the date of the qualifying deadline shall not affect the qualification of a person who pays the required fee and files the required statement by 5:00 p.m. on the date of the qualifying deadline. The name of any person who pays the required fee and files the required statement after 5:00 p.m. on the date of the qualifying deadline shall not be placed on the primary election ballot or the general election ballot.

(5) The Secretary of State or the secretary or circuit clerk to whom such payments are made shall promptly receipt for same stating the office for which the candidate making payment is running and the political party with which he or she is affiliated, if applicable, and he or she shall keep an itemized account in detail showing the exact time and date of the receipt of each payment received by him or her and, where applicable, the date of the postmark on the envelope containing the fee and from whom, and for what office the party paying same is a candidate.

(6) The secretaries of the proper executive committee shall hold the funds to be finally disposed of by order of their respective executive committees. The funds may be used or disbursed by the executive committee receiving same to pay all necessary traveling or other necessary expenses of the members of the executive committee incurred in discharging their duties as committee members, and of their secretary and may pay the secretary such salary as may be reasonable. The Secretary of State shall deposit any qualifying fees received from candidates into the Elections Support Fund established in Section 23-15-5.

(7)(a) Upon receipt of the proper fee and all necessary information, the proper executive committee or the Secretary of State, whichever is applicable, shall then determine at the time of the qualifying deadline, unless otherwise provided by law, whether each candidate is a qualified elector of the state, state district, county or county district which they seek to serve, and whether each candidate meets all other qualifications to hold the office

he or she is seeking or presents absolute proof that he or she will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he or she could be elected to office. The proper executive committee or the Secretary of State, whichever is applicable, shall determine whether the candidate has taken the steps necessary to qualify for more than one (1) office at the election. The committee or the Secretary of State, whichever is applicable, shall also determine whether any candidate has been convicted (i) of any felony in a court of this state, (ii) on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, (iii) of any felony in a federal court on or after December 8, 1992, or (iv) of any offense that involved the misuse or abuse of his or her office or money coming into his or her hands by virtue of the office. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state.

(b) If the proper executive committee or the Secretary of State, whichever is applicable, finds that a candidate either (i) is not a qualified elector, (ii) does not meet all qualifications to hold the office he or she seeks and fails to provide absolute proof, subject to no contingencies, that he or she will meet the qualifications on or before the date of the general or special election at which he or she could be elected, or (iii) has been convicted of a felony or other disqualifying offense as described in paragraph (a) of this subsection, and not pardoned, then the executive committee shall notify the candidate and give the candidate an opportunity to be heard. The executive committee shall mail notice to the candidate at least three (3) business days before the hearing to the address provided by the candidate on the qualifying forms, and the committee shall attempt to contact the candidate by telephone, email and facsimile if the candidate provided this information on the forms. If the candidate fails to appear at the hearing or to prove that he or she meets all qualifications to hold the office subject to no contingencies, then the name of that candidate shall not be placed upon the ballot.

(c) If the proper executive committee or the Secretary of State, whichever is applicable, determines that the candidate has taken the steps necessary to qualify for more than one (1) office at the election, the action required by Section 23-15-905, shall be taken.

(d) Where there is but one (1) candidate for each office contested at the primary election, the proper executive committee or the Secretary of State, whichever is applicable, when the time has expired within which the names of candidates shall be furnished shall declare such candidates the nominees.

(8) No candidate may qualify by filing the information required by this section by using the Internet.

HISTORY: Derived from 1942 Code § 3118 [Codes, 1906, § 3715; Hemingway's 1917, § 6407; 1930, § 5876; Laws, 1928, ch. 128; Laws, 1944, ch. 172; Laws, 1947, 1st Ex Sess, ch. 14; Laws, 1948, ch. 307; Laws, 1960, ch. 477; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346], and § 3121 [Codes, 1930, § 5879; Laws, 1944, ch. 170; Laws, 1947, 1st Ex. Sess. ch 18; Laws, 1962, chs. 566, 567; Laws, 1976, ch. 481, § 2; repealed by Laws, 1986, ch. 495, § 346]; en, Laws, 1986,

ch. 495, § 91; Laws, 1987, ch. 499, § 3; Laws, 2000, ch. 592, § 3; Laws, 2003, ch. 428, § 1; Laws, 2006, ch. 574, § 14; Laws, 2007, ch. 604, § 2; Laws, 2016, ch. 380, § 2; Laws, 2017, ch. 441, § 69, eff from and after July 1, 2017; Laws, 2019, ch. 362, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (7), divided the former first paragraph into present (a) through (c), and designated the former second paragraph (d); in (7)(a), in the third sentence, added the designators (i) through (iii), deleted "or has been convicted" preceding "(ii)" and preceding "(iii)," and added (iv), and deleted "unless the offense also involved misuse or abuse of his or her office or money coming into his or her hands by virtue of the office" at the end of the last sentence; in (7)(b), in the first sentence, inserted "or other disqualifying offense" and "in paragraph (a) of"; and made minor stylistic changes throughout.

OPINIONS OF THE ATTORNEY GENERAL

In order to qualify for a multi-district legislative office, candidates must qualify with the secretary of the state executive committee of their chosen party by 5:00 p.m. on March 1, and, if candidates intend to run in a single county legislative district, they must qualify with the circuit clerk of their home county by 5:00 p.m. on March 1; there are no statutory provisions that allow any exceptions or extensions to these deadlines. Scott, March 26, 1999, A.G. Op. #99-0161.

It is the duty of the executive committee of the political party to determine whether an individual is in fact qualified for the office sought and whether the individual should be placed on the ballot for the party primary. Evans, July 9, 1999, A.G. Op. #99-0346.

When March 1, falls on a Saturday, rather than designating a date other than that required by the statute, all those officials authorized to accept candidate qualification papers must open their offices and be available for that purpose on that date until 5:00 p.m., regardless of whether that office is normally open on that day of the week. Scott, Jan. 16, 2003, A.G. Op. #03-0012.

Once it is determined by the proper executive committee, that a particular candidate meets the eligibility requirements of the above quoted statute, his or her name must be placed on the primary ballot; any finding by said committee that a candidate is not loyal to the political party conducting the primary would not authorize the committee to refuse to place that candidate's name on the primary ballot. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

If a party executive committee refuses to place a candidate's name on the primary ballot, the candidate may file a complaint in circuit court asking that the committee be enjoined to place his or her name on the ballot; the time frame for obtaining such an injunction would be prior to the printing of the official ballots. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

If a party executive committee makes the factual determination that a particular candidate is disloyal to the party and refuses to place said candidate's name on the ballot, a circuit judge when properly presented with the issue may rule on the legality of basing the decision to disqualify the candidate on the ground of party loyalty. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

If the local party refuses to qualify a candidate, the challenge would be heard by the circuit court of the county wherein the executive committee sits. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

A firefighter, or any other employee, who works a shift of twenty-four consecutive hours, exhausts three days of paid leave for each absence resulting from military service described in Miss. Code Ann. § 33-1-21, and is therefore entitled to be paid for up to five twenty-four hour shifts as the equivalent of the fifteen days paid leave authorized in the statute. Odom, March 23, 2007, A.G. Op. #07-00147, 2007 Miss. AG LEXIS 63.

An expenditure of funds received from candidate qualifications could lawfully be

made for the purchase of a laptop computer if a party executive committee as a whole determines, consistent with the facts, that the purchase constitutes an expense incurred in the discharge of the duties of members of the executive committee or their secretaries. Walsh, March 16, 2007, A.G. Op. #07-000143, 2007 Miss. AG LEXIS 114.

§ 23-15-300 Residency requirements for certain candidates for municipal, county or county district offices; applicability of section.

(1) Any candidate for any municipal, county or county district office shall be a resident of the municipality, county, county district or other territory that he or she seeks to represent in such office for two (2) years immediately preceding the day of election. The provisions of this section shall not apply to any municipality with less than one thousand (1,000) residents according to the latest federal decennial census.

(2) A candidate shall prove in his or her qualifying information that he or she meets the applicable residency requirement or provide absolute proof, subject to no contingencies, that he or she will meet the residency requirement on or before the date of the election at which the candidate could be elected to office. The appropriate election official or executive committee, whichever is applicable, with whom a candidate files qualifying information shall review and determine whether the candidate meets the applicable residency requirement according to the procedures in Section 23-15-299. The appropriate election commission shall review and determine whether a candidate required to file qualifying information with it meets the applicable residency requirement according to the procedures in Section 23-15-359.

(3) If the qualifications for an elected office include a specific residency requirement, the residency requirement in this section shall not apply.

(4) This section shall apply to elections held from and after January 1, 2020.

HISTORY: Laws, 2019, ch. 433, § 1, eff from and after July 1, 2019.

§ 23-15-301. Payment of election expenses.

OPINIONS OF THE ATTORNEY GENERAL

This statute does not authorize any payment to a political party or its executive committee other than those listed, i.e., the expenses of printing tickets or ballots, necessary stationery, and of paying the managers, clerks and returning officer. Harper, Dec. 18, 1991, A.G. Op. #91-0926.

Since programming DRE units is the equivalent of printing ballots and is an expense to be borne by the county under Section 23-15-301, a circuit clerk or election commissioner who enters an agreement to perform that task with an executive committee would be entitled to compensation in an amount agreed upon by the two parties and approved by the county board of supervisors. Mitchell, May 12, 2006, A.G. Op. 06-0191.

§ 23-15-303. Each political party or organization to hold independent primary election.

OPINIONS OF THE ATTORNEY GENERAL

Democratic and Republican primaries held on the same day are two separate and distinct elections. Butler, Nov. 3, 2000, A.G. Op. #2000-0667.

A registrar must be actually employed in assisting election commissioners or party executive committees, either personally or through a deputy, for a minimum of five hours during a day or for a minimum of five hours accumulated over two or more days in order to claim a per diem; if a registrar, either personally or through a deputy, is actually employed in assisting both the democratic and republican executive committees for the requisite period during the same day, he or she would be entitled to claim two per diems. Butler, Nov. 3, 2000, A.G. Op. #2000-0667.

§ 23-15-305. Majority vote required for nomination; run-off elections.

OPINIONS OF THE ATTORNEY GENERAL

If the candidate with the most votes or the candidate with the second most votes declines to enter the runoff, the candidate with the next highest votes would be entitled to have his name placed on the runoff ballot. Chaney, Nov. 7, 2002, A.G. Op. #02-0676.

Where a candidate received more than half of the total votes cast for all three candidates in a primary election, he had a majority of the votes as contemplated by this section and § 23-15-191. Tate, Aug. 14, 2003, A.G. Op. 03-0453.

§ 23-15-309. Nomination for elective municipal office to be made at primary election; fee requirements; determination of candidate's qualifications.

OPINIONS OF THE ATTORNEY GENERAL

There is no specific prohibition against a county executive committee member from serving as a municipal election commissioner, but it would give the appearance of impropriety for a municipal election commissioner to be identified with a particulars group of nominees. Pechloff, January 9, 1998, A.G. Op. #97-0803.

A party executive committee must be in place on the qualifying deadline so that the municipal clerk can "promptly" turn the fees and statements of intent over to said committee. Howell, Feb. 28, 2001, A.G. Op. #2001-0123.

The statute clearly contemplates that a municipal party executive committee be in place at the time a potential candidate files his statement of intent and pays the filing fee; however, if a clerk has accepted one or more potential candidate's statement of intent and filing fee at a time when no committee is in place and a legitimate temporary committee is subsequently formed prior to the qualifying deadline, such temporary committee could proceed to review the potential candidates' qualifications and conduct a party primary and/or certify unopposed candidates as the party's nominees. Bowman, Mar. 16, 2001, A.G. Op. #01-0155.

Since municipal party executive committees are statutorily charged with the responsibility of conducting municipal primaries in accordance with state law, mem-

bership on said committees constitutes serving in a position of public trust. James, Oct. 18, 2002, A.G. Op. #02-0597.

Potential candidates for membership on a municipal party executive committee are subject to the provisions of Section 44 of the Constitution and this section as they pertain to criminal convictions. James, Oct. 18, 2002, A.G. Op. #02-0597.

If a municipal party executive committee finds that a potential candidate for membership on said committee who has filed his or her statement of intent has been convicted of any felony covered by Section 44 of the Constitution and this section, said committee could not lawfully qualify that individual as a candidate. James, Oct. 18, 2002, A.G. Op. #02-0597.

A party executive committee has no authority to disqualify or refuse to certify a candidate upon its finding that the candidate misused or abused his office or money coming into his hands by virtue of his office unless there is a felony conviction relating to such alleged misconduct. Mullins, Apr. 8, 2005, A.G. Op. 05-0176.

§ 23-15-313. Selection of temporary executive committee in municipality not having party executive committee; notice to public; county executive committee to serve as municipal executive committee under certain circumstances; person convicted of felony barred from serving as member of municipal executive committee.

OPINIONS OF THE ATTORNEY GENERAL

The statute clearly contemplates that a municipal party executive committee be in place at the time a potential candidate files his statement of intent and pays the filing fee; however, if a clerk has accepted one or more potential candidate's statement of intent and filing fee at a time when no committee is in place and a legitimate temporary committee is subsequently formed prior to the qualifying deadline, such temporary committee could proceed to review the potential candidates' qualifications and conduct a party primary and/or certify unopposed candidates as the party's nominees. Bowman, Mar. 16, 2001, A.G. Op. #01-0155.

In order for a political party to have nominees whose names are to be placed on the municipal general election ballot, there must be either a permanent municipal executive committee representing the party or a temporary committee representing said party. Gilless, Apr. 1, 2005, A.G. Op. 05-0153.

§ 23-15-315. Publication of notice to public.

OPINIONS OF THE ATTORNEY GENERAL

The statute clearly contemplates that a municipal party executive committee be in place at the time a potential candidate files his statement of intent and pays the filing fee; however, if a clerk has accepted one or more potential candidate's statement of intent and filing fee at a time when no committee is in place and a legitimate temporary committee is subsequently formed prior to the qualifying deadline, such temporary committee could proceed to review the potential candidates' qualifications and conduct a party primary and/or certify unopposed candidates as the party's nominees. Bowman, Mar. 16, 2001, A.G. Op. #01-0155.

§ 23-15-317. Nomination of nominee when vacancy in nomination occurs between primary election and general election; procedure for withdrawal based upon legitimate nonpolitical reason.

OPINIONS OF THE ATTORNEY GENERAL

The Democratic party was entitled to nominate a candidate in a deceased candidate's place, even though the candidate's death occurred prior to the primary election and not between the primary and general elections as stated in this section, where the deceased candidate was unopposed for the Democratic nomination which necessarily meant that there would be no Democratic primary election conducted for the office in question and, therefore, the deceased candidate was the Democratic nominee. Clark, March 11, 1999, A.G. Op. #99-0132.

Where a candidate was killed after he had qualified and after the time for qualifying had ended, and was the sole qualifying candidate for office, and had been certified by the county Democratic executive committee, the county Democratic executive committee, and only the county Democratic executive committee, was empowered to nominate a nominee for the office. Long, July 16, 1999, A.G. Op. #99-0345.

If a nominee withdraws for a legitimate nonpolitical reason as defined in Section 23-15-317 and his sworn affidavit is approved by the State Board of Election Commissioners, the municipal party executive committee would then be required to name a substitute nominee. If a nominee withdraws and no affidavit is submitted and approved, said executive committee would have no authority to name a substitute nominee. In either case, the nominee has the right to withdraw his candidacy pursuant to Section 23-15-363. Baum, May 20, 2005, A.G. Op. 05-0237.

ARTICLE 13.

BALLOTS.

Subarticle B. Other Elections. 23-15-351

SUBARTICLE B.

OTHER ELECTIONS.

Sec.

23-15-351. Authority to print ballots; penalties.
23-15-355. Payment of ballot expenses.
23-15-359. Names of candidates to be printed on ballot; filing of petition for office; inapplicability of section to municipal elections; special elections; determination of candidate's qualifications; declaration of nominee in single candidate race.

§ 23-15-351. Authority to print ballots; penalties.

It shall be the duty of the chair of the election commission of each county to have printed all necessary ballots for use in elections, except ballots in municipal elections which shall be printed as herein provided by the authorities of the respective municipalities; and the election commissioner shall cause

the official ballot to be printed by a printer sworn to keep the ballots secret under the penalties prescribed by law. The printer shall deliver to the election commissioners for holding elections, a certificate of the number of ballots printed for each precinct, and shall not print any additional ballots, except on instruction of proper election commissioners; and failure to observe either of these requirements shall be a misdemeanor.

In the case of a statewide special election on the new design for the official Mississippi State Flag provided for in Section 2 of Chapter 427, Laws of 2020, the provisions of this article regarding the printing and distribution of the official ballots shall be governed by the provisions of Section 2(3) of Chapter 427, Laws of 2020.

HISTORY: Derived from 1972 Code § 23-5-119 [Codes, 1892, § 3651; 1906, § 4158; Hemingway's 1917, § 6792; 1930, § 6224; 1942, § 3253; Laws, 1968, ch. 571, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 105; Laws, 2001, ch. 301, § 3; Laws, 2017, ch. 441, § 75, eff from and after July 1, 2017; Laws, 2020, ch. 427, § 3, eff from and after passage (approved June 30, 2020).

Editor's Notes — See Editor's Note under former Section 3-3-16 for full text of Section 2 of Chapter 427, Laws of 2020, referenced in this section.

Amendment Notes — The 2020 amendment, effective June 30, 2020, added the last paragraph.

Cross References — Plan for removal of state flag, § 3-3-16.1.

§ 23-15-355. Payment of ballot expenses.

Ballots in all elections shall be printed and distributed at public expense and shall be known as "official ballots." The expense of printing the ballots shall be paid out of the county treasury, except that in municipal elections such expenses shall be paid by the respective cities, towns and villages.

In the case of a statewide special election on the new design for the official Mississippi State Flag provided for in Section 2 of Chapter 427, Laws of 2020, the provisions of this section regarding payment of the expenses of printing the official ballots shall be governed by the provisions of Section 2(3) of Chapter 427, Laws of 2020.

HISTORY: Derived from 1972 Code § 23-5-123 [Codes, 1892, § 3650; 1906, § 4157; Hemingway's 1917, § 6791; 1930, § 6226; 1942, § 3255; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 107; Laws, 2001, ch. 301, § 4; Laws, 2017, ch. 441, § 77, eff from and after July 1, 2017; Laws, 2020, ch. 427, § 4, eff from and after passage (approved June 30, 2020).

Editor's Notes — See Editor's Note under former Section 3-3-16 for full text of Section 2 of Chapter 427, Laws of 2020, referenced in this section.

Amendment Notes — The 2020 amendment, effective June 30, 2020, added the last paragraph.

Cross References — Plan for removal of state flag, § 3-3-16.1.

§ 23-15-357. Back and outside of ballot.

OPINIONS OF THE ATTORNEY GENERAL

The printing of the information required by the statute on the front of Optical Mark Reading ballots accomplishes the purpose of the statute and promotes the most efficient use of the voting system; therefore, it is legally permissible to print the required information on the front of the ballot only. Watts, Feb. 23, 2001, A.G. Op. #2001-0101.

§ 23-15-359. Names of candidates to be printed on ballot; filing of petition for office; inapplicability of section to municipal elections; special elections; determination of candidate's qualifications; declaration of nominee in single candidate race.

(1) Except as provided in this section, the ballot shall contain the names of all party nominees certified by the appropriate executive committee, and independent and special election candidates who have timely filed petitions containing the required signatures and assessments that must be paid pursuant to Section 23-15-297, if the candidates and nominees meet all of the qualifications to hold the office sought. A petition requesting that an independent or special election candidate's name be placed on the ballot for any office shall be filed as provided for in subsection (3) or (4) of this section, as appropriate, and shall be signed by not less than the following number of qualified electors:

(a) For an office elected by the state at large, not less than one thousand (1,000) qualified electors.

(b) For an office elected by the qualified electors of a Supreme Court district, not less than three hundred (300) qualified electors.

(c) For an office elected by the qualified electors of a congressional district, not less than two hundred (200) qualified electors.

(d) For an office elected by the qualified electors of a circuit or chancery court district, not less than one hundred (100) qualified electors.

(e) For an office elected by the qualified electors of a senatorial or representative district, not less than fifty (50) qualified electors.

(f) For an office elected by the qualified electors of a county, not less than fifty (50) qualified electors.

(g) For an office elected by the qualified electors of a supervisors district or justice court district, not less than fifteen (15) qualified electors.

(h) For the Office of President of the United States, a party nominee or independent candidate shall pay an assessment in the amount of Two Thousand Five Hundred Dollars ($2,500.00).

(2)(a) Unless the petition or fee, whichever is applicable, required above shall be filed as provided for in subsection (3), (4) or (5) of this section, as appropriate, the name of the person requested to be a candidate, unless nominated by a political party, shall not be placed upon the ballot. The ballot

shall contain the names of each candidate for each office, and the names shall be listed under the name of the political party that candidate represents as provided by law and as certified to the circuit clerk by the state executive committee of the political party. In the event the candidate qualifies as an independent as provided in this section, he or she shall be listed on the ballot as an independent candidate.

(b) The name of an independent or special election candidate who dies before the printing of the ballots, shall not be placed on the ballots.

(3) Petitions for offices described in paragraphs (a), (b), (c), (d) and (e) of subsection (1) of this section shall be filed with the Secretary of State by no later than 5:00 p.m. on the same date or business day, as applicable, by which candidates are required to pay the fee provided for in Section 23-15-297; however, no petition may be filed before January 1 of the year in which the election for the office is held.

(4) Petitions for offices described in paragraphs (f) and (g) of subsection (1) of this section shall be filed with the proper circuit clerk by no later than 5:00 p.m. on the same date by which candidates are required to pay the fee provided for in Section 23-15-297; however, no petition may be filed before January 1 of the year in which the election for the office is held. The circuit clerk shall notify the county election commissioners of all persons who have filed petitions with the clerk. The notification shall occur within two (2) business days and shall contain all necessary information.

(5) The assessment for the office described in paragraph (h) of subsection (1) of this section shall be paid to the Secretary of State. The Secretary of State shall deposit any qualifying fees received from candidates into the Elections Support Fund established in Section 23-15-5.

(6) The election commissioners may also have printed upon the ballot any local issue election matter that is authorized to be held on the same date as the regular or general election pursuant to Section 23-15-375; however, the ballot form of the local issue must be filed with the election commissioners by the appropriate governing authority not less than sixty (60) days before the date of the election.

(7) The provisions of this section shall not apply to municipal elections or to the election of the offices of justice of the Supreme Court, judge of the Court of Appeals, circuit judge, chancellor, county court judge and family court judge.

(8) Nothing in this section shall prohibit special elections to fill vacancies in either house of the Legislature from being held as provided in Section 23-15-851. In all elections conducted under the provisions of Section 23-15-851, there shall be printed on the ballot the name of any candidate who, not having been nominated by a political party, shall have been requested to be a candidate for any office by a petition filed with the Secretary of State and signed by not less than fifty (50) qualified electors.

(9)(a) The appropriate election commission shall determine whether each candidate is a qualified elector of the state, state district, county or county district they seek to serve, and whether each candidate meets all other qualifications to hold the office he or she is seeking or presents absolute proof

that he or she will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he or she could be elected to office. The election commission shall determine whether the candidate has taken the steps necessary to qualify for more than one (1) office at the election. The election commission also shall determine whether any candidate has been convicted (i) of any felony in a court of this state, (ii) on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, (iii) of any felony in a federal court on or after December 8, 1992, or (iv) of any offense that involved the misuse or abuse of his or her office or money coming into his or her hands by virtue of the office. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state.

(b) If the appropriate election commission finds that a candidate either (i) is not a qualified elector, (ii) does not meet all qualifications to hold the office he or she seeks and fails to provide absolute proof, subject to no contingencies, that he or she will meet the qualifications on or before the date of the general or special election at which he or she could be elected, or (iii) has been convicted of a felony or other disqualifying offense as described in paragraph (a) of this subsection, and not pardoned, then the election commission shall notify the candidate and give the candidate an opportunity to be heard. The election commission shall mail notice to the candidate at least three (3) business days before the hearing to the address provided by the candidate on the qualifying forms, and the committee shall attempt to contact the candidate by telephone, email and facsimile if the candidate provided this information on the forms. If the candidate fails to appear at the hearing or to prove that he or she meets all qualifications to hold the office subject to no contingencies, then the name of such candidate shall not be placed upon the ballot. If the appropriate election commission determines that the candidate has taken the steps necessary to qualify for more than one (1) office at the election, the action required by Section 23-15-905, shall be taken.

(10) If after the deadline to qualify as a candidate for an office or after the time for holding any party primary for an office, only one (1) person has duly qualified to be a candidate for the office in the general election, the name of that person shall be placed on the ballot; provided, however, that if not more than one (1) person duly qualified to be a candidate for each office on the general election ballot, the election for all offices on the ballot shall be dispensed with and the appropriate election commission shall declare each candidate elected without opposition if the candidate meets all the qualifications to hold the office as determined pursuant to a review by the election commission in accordance with the provisions of subsection (9) of this section and if the candidate has filed all required campaign finance disclosure reports as required by Section 23-15-807.

(11) The petition required by this section may not be filed by using the Internet.

HISTORY: Derived from 1972 Code § 23-5-134 [Laws, 1978, ch. 429, § 1; Laws, 1982, ch. 477, § 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 109; Laws, 1987, ch. 499, § 5; Laws, 1989, ch. 431, § 2; Laws, 2000, ch. 592, § 5; Laws, 2002, ch. 336, § 1; Laws, 2006, ch. 574, § 15; Laws, 2007, ch. 570, § 2; Laws, 2007, ch. 604, § 4; Laws, 2008, ch. 554, § 1; Laws, 2010, ch. 320, § 2; Laws, 2016, ch. 380, § 3; Laws, 2017, ch. 441, § 78, eff from and after July 1, 2017; Laws, 2019, ch. 362, § 2, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in (9), divided the former paragraph into present (a) and (b); in (9)(a), in the third sentence, added the designators (i) through (iii), deleted "or has been convicted" preceding "(ii)" and preceding "(iii)," and added (iv), and deleted "unless the offense also involved misuse or abuse of his or her office or money coming into his or her hands by virtue of the office" at the end of the last sentence; in (9)(b), in the first sentence, inserted "or other disqualifying offense" and "in paragraph (a) of," and made minor stylistic changes.

OPINIONS OF THE ATTORNEY GENERAL

As long as the election date agreed upon by the city and the board of supervisors is not the date of the general election, then the sixty day notice requirement of the statute does not apply to the election authorized pursuant to House Bill 1868 in connection with a county-wide referendum on the additional assessment of sales tax on food and beverages. Entrekin, May 15, 1998, A.G. Op. #98-0271.

In an election for school board members in two different districts, if one district has only one qualified candidate and the other has two or more qualified candidates, if one office is unopposed but there is opposition in the other office, an election must be held for both offices and the election for the unopposed office may not be dispensed with in accordance with Section 23-15-359 (9). Sanford, July 15, 2005, A.G. Op. 05-0315.

A political candidate's nickname should not be used on ballots unless the officials in charge of the election determine, consistent with the facts, that the nickname is necessary to identify the candidate to the voters. Coleman, March 23, 2007, A.G. Op. #07-00153, 2007 Miss. AG LEXIS 117.

§ 23-15-361. Names of municipal office candidates to be printed on ballot; filing of petition for municipal office; determination of candidate's qualifications; declaration of nominee in single candidate race.

OPINIONS OF THE ATTORNEY GENERAL

Petitions filed by candidates containing only a legally sufficient number of signatures of qualified electors to qualify under proposed (not currently effective) ward lines were not valid at the time they were submitted, and could not be supplemented by additional signatures so that they would contain a legally sufficient number of signatures of qualified electors from the old, and currently still effective, ward lines. Wiggins, May 6, 2005, A.G. Op. 05-0216.

Section 23-15-361 requires that signatures on municipal ward candidate petitions, to be valid, must be those of qualified electors of the ward for the office sought. Wiggins, May 6, 2005, A.G. Op. 05-0216.

If a nominee meets all the qualifications to hold the office for which he was certified as a candidate and for which he was subsequently nominated, a municipal election commission may not lawfully refuse to place his name on a general or special election ballot based on an irregularity in the process of qualifying as a candidate in a party primary. White, Nov. 22, 2006, A.G. Op. 06-0599.

A political candidate's nickname should not be used on ballots unless the officials in charge of the election determine, consistent with the facts, that the nickname is necessary to identify the candidate to the voters. Coleman, March 23, 2007, A.G. Op. #07-00153, 2007 Miss. AG LEXIS 117.

§ 23-15-363. Names of candidates who have not duly withdrawn not omitted from ballot.

OPINIONS OF THE ATTORNEY GENERAL

A write-in candidate is appropriate only when one has qualified as a candidate for a particular office and subsequently dies, resigns, withdraws, or is removed as a candidate. Hatcher, Mar. 23, 2001, A.G. Op. #01-0163.

If a nominee withdraws for a legitimate nonpolitical reason as defined in Section 23-15-317 and his sworn affidavit is approved by the State Board of Election Commissioners, the municipal party executive committee would then be required to name a substitute nominee. If a nominee withdraws and no affidavit is submitted and approved, said executive committee would have no authority to name a substitute nominee. In either case, the nominee has the right to withdraw his candidacy pursuant to Section 23-15-363. Baum, May 20, 2005, A.G. Op. 05-0237.

§ 23-15-365. Write-in candidates; blank space on general, special and primary election ballots; applicability of section to elections conducted under Sections 23-15-974 through 23-15-985.

OPINIONS OF THE ATTORNEY GENERAL

Where ballots were not printed for a primary election, this section was not invoked and there was no provision for the casting of write-in votes; therefore, any write-in votes cast in the primary election would not be valid. Shepard, June 4, 1999, A.G. Op. #99-0263.

ARTICLE 15.

VOTING SYSTEMS.

SUBARTICLE D.

OPTICAL MARK READING EQUIPMENT.

§ 23-15-523. Counting vote.

OPINIONS OF THE ATTORNEY GENERAL

Since ballots will be counted in presence of officials of both parties and general public, there is no apparent prohibition against representative of one party using key to particular voting machine to initiate counting process which would include counting of ballots for another party. Johnson, Sept. 2, 1992, A.G. Op. #92-0572.

ARTICLE 17.
CONDUCT OF ELECTIONS.
SUBARTICLE A.
GENERAL PROVISIONS.

§ 23-15-541. Hours polls to be open; designation and duties of initialing poll manager and alternate initialing poll manager; curbside voting authorized for certain individuals; procedure.

OPINIONS OF THE ATTORNEY GENERAL

Assuming that voters who cast uninitialed paper ballots were entitled to vote in the election and did, in fact, follow the law in casting those ballots and but for a failure on the part of the poll workers the legality of those ballots would not be in question, the ballots must be counted. Rhodes, Nov. 10, 2003, A.G. Op. 03-0626.

§ 23-15-547. Electronic capture of voters' signatures; paper version may be generated after polls close.

OPINIONS OF THE ATTORNEY GENERAL

If a voter voted in one or more of the Monroe County Democratic Primary elections but did not vote in the Monroe Justice Court Judge District 3 County Primary Election, then their ballot should not be counted for purposes of determining the total number of qualified electors who voted in the Monroe Justice Court Judge District 3 County Primary Election. Likewise, if a voter's ballot is not counted for the office of Monroe Justice Court Judge District 3 in the County Primary Election because it violates this section, then that ballot shall not be counted for purposes of determining the total number of qualified electors who voted in the Monroe Justice Court Judge District 3 County Primary Election. Butler, Aug. 8, 2003, A.G. Op. 03-0428.

§ 23-15-557. Municipality's authority to establish precincts and polling places.

OPINIONS OF THE ATTORNEY GENERAL

If governing authorities make determination that ward is of such size and population that more than one precinct is required, then they may divide ward into two or more precincts; governing authorities may but are not required to establish polling place in each precinct but there must be same number of polling places as precincts, and governing authorities may locate polling places without regard to precinct lines. Granberry, Jan. 20, 1994, A.G. Op. #93-0870.

There must be the same number of polling places as precincts, although the governing authorities may locate polling places without regard to precinct lines; any changes to precincts, whether adding to the number or moving any precincts, must be submitted to the United States Department of Justice for approval pursu-

ant to Section 5 of the Voting Rights Act of 1965. Fortier, July 30, 1998, A.G. Op. #98-0431.

SUBARTICLE B.

AFFIDAVIT BALLOTS AND CHALLENGED BALLOTS.

§ 23-15-571. Challenge to voter qualifications.

OPINIONS OF THE ATTORNEY GENERAL

Regarding the question whether it is legal for a vote cast in the Democratic primary to be challenged simply because the poll worker or someone from the local Democratic Party alleges that the voter is really a Republican or Republican supporter, the stated intent of the voter would be controlling. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

The vote of a person who is forced to cast a "challenged" or "rejected" ballot pursuant to Section 23-15-579 will not be counted in determining the initial outcome of the election; however, in an election contest the circuit court may order that such be counted if it determines that the challenges had no basis in fact or in law. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

A registered voter may not cast a lawful ballot in a voting precinct other than the precinct where he or she resides. Shepard, July 14, 2003, A.G. Op. 03-0345.

§ 23-15-573. Certain persons not to vote except by affidavit ballot; form of affidavit ballot envelope; procedure after voting by affidavit ballot when acceptable photo identification was not presented.

OPINIONS OF THE ATTORNEY GENERAL

Ballots cast by individuals not appearing on the pollbooks that did not contain accompanying affidavits as required by the statute were improperly cast and should not be counted. Hafter, Dec. 22, 1999, A.G. Op. #99-0697.

This section and the prescribed form make it mandatory that the affidavit contain the name of the voter, the physical addresses (former and present if they have moved within the county) of the voter, telephone numbers (if the voter has such numbers), the signature of the voter and the signature of one of the election managers. Additionally, the voter must check the appropriate box on the form indicating the reason he or she is entitled to vote. Sautermeister, Sept. 26, 2003, A.G. Op. 03-0497.

§ 23-15-575. Who may vote in primary election.

OPINIONS OF THE ATTORNEY GENERAL

Regarding the question whether it is legal for a vote cast in the Democratic primary to be challenged simply because the poll worker or someone from the local Democratic Party alleges that the voter is really a Republican or Republican supporter, the stated intent of the voter would be controlling. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

The vote of a person who is forced to

cast a "challenged" or "rejected" ballot pursuant to Section 23-15-579 will not be counted in determining the initial outcome of the election; however, in an election contest the circuit court may order that such be counted if it determines that the challenges had no basis in fact or in law. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

A poll worker, poll watcher or another voter is not allowed to ask a voter if he or she intends to support the nominees of the party once the voter presents himself or herself to vote. Challenges may be made pursuant to Section 23-15-579 only for the reasons listed in Section 23-15-571, and for the reason that the voter does not intend to support the nominees of the party per this section. Cole, July 21, 2003, A.G. Op. 03-0316.

If a challenge of a voter is properly initiated in strict accordance with Section 23-15-579 and the voter then openly declares that he or she does not intend to support the nominees of the party, the poll workers could find the challenge to be well taken and mark the ballot "challenged" or "rejected" consistent with the provisions of said statute; on the other hand, if the voter openly declares his or her intent to support the nominees, then a challenge is not proper under this section. Cole, July 21, 2003, A.G. Op. 03-0316.

Absent an obvious factual situation such as an independent candidate attempting to vote in a party's primary, the stated intent of the voter is controlling. Cole, July 21, 2003, A.G. Op. 03-0316.

§ 23-15-579. Procedure when vote challenged.

OPINIONS OF THE ATTORNEY GENERAL

The vote of a person who is forced to cast a "challenged" or "rejected" ballot pursuant to Section 23-15-579 will not be counted in determining the initial outcome of the election; however, in an election contest the circuit court may order that such be counted if it determines that the challenges had no basis in fact or in law. Hemphill, Jan. 16, 2003, A.G. Op. #03-0015.

Statutory requirements applicable to the acquisition of computer equipment and services are also applicable to the acquisition of computer equipment and services necessary to implement a computerized statewide voter registration system under the Help America Vote Act (HAVA). However, acquisitions of computer equipment and services approved by ITS in order to implement a computerized voter registration system under HAVA will also have to be approved by the Secretary of State. Bearman, July 27, 2004, A.G. Op. 04-0340.

Challenged ballots should be counted, tallied and totaled and a separate return made at the courthouse or other central location after all unchallenged ballots have been counted, tallied and totaled. Payne, July 30, 2004, A.G. Op. 04-0348.

The separate envelope containing the rejected ballots and the separate envelope containing the challenged ballots must be sealed and returned in the appropriate ballot box to be preserved in the registrar's office. Should an election contest be filed, the court before whom the contest is heard will decide what impact, if any, such ballots had on the election and will rule accordingly. Payne, July 30, 2004, A.G. Op. 04-0348.

SUBARTICLE C.

DETERMINING THE RESULTS OF ELECTIONS.

§ 23-15-593. Irregularities in ballot box.

OPINIONS OF THE ATTORNEY GENERAL

Statute does not contemplate or authorize setting up new period in which to allow additional candidates to qualify when ballot box or boxes are "thrown out" in election. Graves, April 10, 1991, A.G. Op. #91-0253.

§ 23-15-601. Canvass of returns and declaration of results by election commissioners; determination of tie vote.

OPINIONS OF THE ATTORNEY GENERAL

So long as members of a county election commission had no knowledge of or were not a participant in any illegal or criminal activities associated with a general election, they will not be liable civilly or criminally for proceeding with their duty to complete the canvass and to certify the election result in accordance with Section 23-15-601 and transmitting the result to the secretary of state in accordance with Section 23-15-603. Bankhead, Nov. 22, 2006, A.G. Op. 06-0612.

§ 23-15-603. Delivery of returns to Secretary of State.

OPINIONS OF THE ATTORNEY GENERAL

So long as members of a county election commission had no knowledge of or were not a participant in any illegal or criminal activities associated with a general election, they will not be liable civilly or criminally for proceeding with their duty to complete the canvass and to certify the election result in accordance with Section 23-15-601 and transmitting the result to the secretary of state in accordance with Section 23-15-603. Bankhead, Nov. 22, 2006, A.G. Op. 06-0612.

ARTICLE 19.

ABSENTEE BALLOTS.

Subarticle A. Absentee Balloting Procedures Law. 23-15-621
Subarticle B. Armed Services Absentee Voting Law. 23-15-671
Subarticle C. Absentee Voter Law. 23-15-711
Subarticle D. Provision Applicable to Presidential Election. 23-15-731

SUBARTICLE A.

ABSENTEE BALLOTING PROCEDURES LAW.

Sec.

23-15-625. Duties of registrar relating to the provision and disbursement of absentee voting applications; request for application by person other than elector seeking to vote by absentee ballot; solicitation of absentee ballot applications for persons staying in skilled nursing facility prohibited; exceptions; maintenance of list of absentee voters; public access to list; placement of absentee ballots in ballot boxes; authority to mail applications to qualified electors; use of Statewide Election Management System.
23-15-627. Distribution of absentee ballot application by registrar; request for absentee ballot application; form of application.
23-15-629. Applications by persons who are permanently physically disabled; listing of qualified electors; distribution of ballots.
23-15-631. Instructions to absent electors; instructions as constituting substantive law.
23-15-635. Form of elector's certificate, attesting witness certification, and voter assistance certificate where voter is not absent voter as defined in the Armed Forces Absentee Voting Law.
23-15-637. Timely casting of ballots.
23-15-639. Examination, processing and counting of all absentee ballots at the opening and closing of polls.
23-15-641. Grounds for rejection of ballots; procedure.
23-15-645. Processing and tallying of absentee ballots cast in registrar's office and received by mail that are deposited into sealed ballot box; preservation of materials relative to absentee voters; return of materials to registrar; disposal of unused ballots.
23-15-647. Disposition of absentee ballots received after applicable deadlines.
23-15-649. Preparation and printing of absentee voter ballots.
23-15-651. Announcement of results of vote by absentee balloting.

§ 23-15-625. Duties of registrar relating to the provision and disbursement of absentee voting applications; request for application by person other than elector seeking to vote by absentee ballot; solicitation of absentee ballot applications for persons staying in skilled nursing facility prohibited; exceptions; maintenance of list of absentee voters; public access to list; placement of absentee ballots in ballot boxes; authority to mail applications to qualified electors; use of Statewide Election Management System.

(1) The registrar shall be responsible for providing applications for absentee voting as provided in this section. At least sixty (60) days before any election in which absentee voting is provided for by law, the registrar shall provide a sufficient number of applications. In the event a special election is called and set at a date which makes it impractical or impossible to prepare applications for absent elector's ballot sixty (60) days before the election, the

registrar shall provide applications as soon as practicable after the election is called. The registrar shall fill in the date of the particular election on the application for which the application will be used.

(2) The registrar shall be authorized to disburse applications for absentee ballots to any qualified elector within the county where he or she serves. Any person who presents to the registrar an oral or written request for an absentee ballot application for a voter entitled to vote absentee by mail, other than the elector who seeks to vote by absentee ballot, shall, in the presence of the registrar, sign the application and print on the application his or her name and address and the name of the elector for whom the application is being requested in the place provided for on the application for that purpose. However, if for any reason such person is unable to write the information required, then the registrar shall write the information on a printed form which has been prescribed by the Secretary of State. The form shall provide a place for such person to place his or her mark after the form has been filled out by the registrar.

(3) It shall be unlawful for any person to solicit absentee ballot applications or absentee ballots for persons staying in any skilled nursing facility as defined in Section 41-7-173 unless the person soliciting the absentee ballot applications or absentee ballots is:

(a) A family member of the person staying in the skilled nursing facility; or

(b) A person designated by the person for whom the absentee ballot application or absentee ballot is sought, the registrar or the deputy registrar.

As used in this subsection, "family member" means a spouse, parent, grandparent, sibling, adult child, grandchild or legal guardian.

(4) The registrar in the county wherein a voter is qualified to vote upon receiving by mail the envelope containing the absentee ballots shall keep an accurate list of all persons preparing such ballots. The list shall be kept in a conspicuous place accessible to the public near the entrance to the registrar's office. The registrar shall also furnish to each precinct manager a list of the names of all persons in each respective precinct voting absentee by mail and in person to be posted in a conspicuous place at the polling place for public notice. The application on file with the registrar and the envelopes containing the ballots that voters mailed to the registrar shall be kept by the registrar in his or her office in a secure location. At the time such boxes are delivered to the election commissioners or managers, the registrar shall also turn over a list of all such persons who have voted and whose mailed ballots are in the registrar's office.

(5) The registrar shall also be authorized to mail one (1) application to any qualified elector of the county, who is eligible to vote by absentee ballot, for use in a particular election.

(6) The registrar shall process all applications for absentee ballots by using the Statewide Election Management System. The registrar shall account for all absentee ballots delivered to and received by mail as well as those who voted absentee in person from qualified voters by processing such ballots using the Statewide Election Management System.

HISTORY: Derived from 1972 Code § 23-9-405 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 405; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 200; Laws, 1993, ch. 528, § 5; Laws, 1999, ch. 420, § 1; Laws, 2006, ch. 574, § 16; Laws, 2008, ch. 528, § 9; Laws, 2012, ch. 471, § 2, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 472, § 9, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1), substituted "sixty (60) days before" for "sixty (60) days prior to" twice; in (3), combined the former two sentences in the introductory paragraph into the present single sentence by deleting "This prohibition shall not apply to" and adding "unless the person soliciting the absentee ballot applications or absentee ballots is"; in (4), divided the former first sentence into the present first and second sentences by deleting "which" and adding "The," in the third sentence, substituted "by mail and in person" for "ballots," rewrote the fourth sentence, which read: "The application on file with the registrar and the envelopes containing the ballots shall be kept by the registrar and deposited in the proper precinct ballot boxes before such boxes are delivered to the election commissioners or managers," and substituted "whose mailed ballots are in the registrar's office" for "whose ballots are in the box"; in (5), inserted "who is eligible to vote by absentee ballot"; in the second sentence of (6), inserted "by mail as well as those who voted absentee in person"; and made gender neutral changes throughout.

OPINIONS OF THE ATTORNEY GENERAL

An inadvertent omission of names from the list of absentee voters would not cause a vote to be invalid; however, the application form must still be valid for the vote to be counted. Hafter, Dec. 22, 1999, A.G. Op. #99-0697.

The provisions of the statute that refer to the sequential numbering of absentee ballots and the filing of the affidavit by the clerk upon receipt of same have not obtained the required preclearance from the United States Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, and therefore, have not taken effect. Hafter, Dec. 22, 1999, A.G. Op. #99-0697.

§ 23-15-627. Distribution of absentee ballot application by registrar; request for absentee ballot application; form of application.

Any elector described in Section 23-15-713 may request an absentee ballot application and vote in person at the office of the registrar in the county in which he or she resides. The registrar shall be responsible for furnishing an absentee ballot application form to any elector authorized to receive an absentee ballot. Except as otherwise provided in Section 23-15-625, absentee ballot applications shall be furnished to a person only upon the oral or written request of the elector who seeks to vote by absentee ballot; however, the parent, child, spouse, sibling, legal guardian, those empowered with a power of attorney for that elector's affairs or agent of the elector, who is designated in writing and witnessed by a resident of this state who shall write his or her physical address on such designation, may orally request an absentee ballot application on behalf of the elector. The written designation shall be valid for one (1) year after the date of the designation. An absentee ballot application must have the seal of the circuit or municipal clerk affixed to it and be initialed

by the registrar or his or her deputy in order to be used to obtain an absentee ballot. A reproduction of an absentee ballot application shall not be valid unless it is a reproduction provided by the office of the registrar of the jurisdiction in which the election is being held and which contains the seal and initials required by this section. Such application shall be substantially in the following form:

"OFFICIAL APPLICATION FOR ABSENT ELECTOR'S BALLOT

I, _____, duly qualified and registered in the _____ Precinct of the _____County of, and State of Mississippi, coming within the purview of the definition 'ABSENT ELECTOR' will be absent from the county of my residence on election day, or unable to vote in person because (check appropriate reason):

( ) (PRESIDENTIAL APPLICANT ONLY:) I am currently a resident of Mississippi or have moved therefrom within thirty (30) days of the coming presidential election.

( ) I am an enlisted or commissioned member, male or female, of any component of the United States Armed Forces and am a citizen of Mississippi, or spouse or dependent of such member.

( ) I am a member of the Merchant Marine or the American Red Cross and am a citizen of Mississippi or spouse or dependent of such member.

( ) I am a disabled war veteran who is a patient in any hospital and am a citizen of Mississippi or spouse or dependent of such veteran.

( ) I am a civilian attached to and serving outside of the United States with any branch of the Armed Forces or with the Merchant Marine or American Red Cross, and am a citizen of Mississippi or spouse or dependent of such civilian.

( ) I am a citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia.

( ) I am a student, teacher or administrator at a college, university, junior or community college, high, junior high, elementary or grade school, whose studies or employment at such institution necessitates my absence from the county of my voting residence or spouse or dependent of such student, teacher or administrator who maintains a common domicile outside the county of my voting residence with such student, teacher or administrator.

( ) I will be outside the county on election day.

( ) I have a temporary or permanent physical disability, which may include, but is not limited to, a physician-imposed quarantine due to COVID-19 during the year 2020. Or, I am caring for a dependent that is under a physician-imposed quarantine due to COVID-19 beginning with July 8, 2020 and the same being repealed on December 31, 2020.

( ) I am sixty-five (65) years of age or older.

( ) I am the parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside his or her county of residence or more than fifty (50) miles away from his or her residence, and I will be with such person on election day.

( ) I am a member of the congressional delegation, or spouse or dependent of a member of the congressional delegation.

( ) I am required to be at work on election day during the times which the polls will be open.

I hereby make application for an official ballot, or ballots, to be voted by me at the election to be held _____in, _____on.

Mail 'Absent Elector's Ballot' to me at the following address _____.

( ) I wish to receive an absentee ballot for the runoff election _____.

I realize that I can be fined up to Five Thousand Dollars ($5,000.00) and sentenced up to five (5) years in the Penitentiary for making a false statement in this application and for selling my vote and violating the Mississippi Absentee Voter Law. (This sentence is to be in bold print.)

If you are temporarily or permanently disabled, you are not required to have this application notarized or signed by an official authorized to administer oaths for absentee balloting. You are required to sign this application in the proper place and have a person eighteen (18) years of age or older witness your signature and sign this application in the proper place.

DO NOT SIGN WITHOUT READING. (This sentence is to be in bold print.)

IN WITNESS WHEREOF I have hereunto set my hand and seal this the ____ day of _____, 2____.

_____

(Signature of absent elector)

SWORN TO AND SUBSCRIBED before me this the ____ day of _____, 2____.

_____

(Official authorized to administer oaths for absentee balloting.)

TO BE SIGNED BY WITNESS FOR VOTERS TEMPORARILY OR PERMANENTLY DISABLED:

I HEREBY CERTIFY that this application for an absent elector's ballot was signed by the above-named **elector in my presence and that I am at least eighteen (18) years of age, this the ____ day of _____**, 2____.

_____

(Signature of witness)

CERTIFICATE OF DELIVERY

I hereby certify that _____ (print name of voter)has requested that I, _____ (print name of person delivering application), deliver to the voter this absentee ballot application.

_____

(Signature of person delivering application)

_____

(Address of person delivering application)"

HISTORY: Derived from 1972 Code § 23-9-407 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 201; Laws, 1986, ch. 495, § 201; Laws, 1993, ch. 528, § 6; Laws, 1999, ch. 420, § 2; Laws, 2000, ch. 592, § 9; Laws, 2008, ch. 528, § 10, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 472, § 5, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in the first paragraph, added the first sentence, and in the fifth sentence, substituted "be used to obtain" for "be utilized to obtain"; in the OFFICIAL APPLICATION FOR ABSENT ELECTOR'S BALLOT, added " which may include...on December 31, 2020" in the tenth paragraph, deleted "(if eligible to vote by mail)" from the end of the sixteenth paragraph, added the seventeenth paragraph, and deleted "disabled" following "was signed by the above-named" in the next-to-last paragraph; and made gender neutral changes throughout.

OPINIONS OF THE ATTORNEY GENERAL

A city election commission may not count absentee ballots that were obtained due to improper application forms. Hafter, Dec. 22, 1999, A.G. Op. #99-0697.

§ 23-15-629. Applications by persons who are permanently physically disabled; listing of qualified electors; distribution of ballots.

(1) The application for an absentee ballot of a person who is permanently physically disabled shall be accompanied by a statement signed by such person's physician, or nurse practitioner, which statement must show that the person signing the statement is a licensed, practicing medical doctor or nurse practitioner and must indicate that the person applying for the absentee ballot is permanently physically disabled to such a degree that it is difficult for him or her to vote in person.

(2) An application accompanied by the statement provided for in subsection (1) of this section shall entitle such permanently physically disabled person to automatically receive an absentee ballot for all elections on a continuing basis without the necessity for reapplication.

(3) The registrar of each county shall keep an accurate list of the names and addresses of all persons whose applications for absentee ballot are accompanied by the statement set forth in subsection (1) of this section. Sixty (60) days before each election, the registrar shall deliver such list to the election commissioners who shall examine the list and delete from it the names of all persons listed who are no longer qualified electors of the county. Upon completion of such examination, the election commissioners shall return the list to the registrar by no later than forty-five (45) days before the election.

(4) The registrar shall mail a ballot to all persons who are determined by the election commissioners to be qualified electors pursuant to subsection (3) of this section by no later than forty (40) days before the election.

HISTORY: Laws, 1986, ch. 495, § 202; Laws, 1995, ch. 344, § 1; Laws, 2006, ch. 574, § 17, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 472, § 10, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (3), substituted "(60) days before" for "(60) days prior to" and "(45) days before" for "(45) days prior to"; in (4), substituted "shall mail" for "shall send" and "(40) days before" for "(40) days prior to"; substituted "election commissioners" for "commissioners of election" everywhere it appears in (3) and (4); and made gender neutral changes in (1).

OPINIONS OF THE ATTORNEY GENERAL

A voter who is blind or is unable to read the ballot or mark the ballot and possesses the mental capacity to express his will as to how he wishes to vote and is qualified to vote by absentee ballot, is not disenfranchised but to entitled to receive the needed assistance that is statutorily provided for persons who vote at the polls. Townsen, Nov. 14, 1991, A.G. Op. #91-0886.

§ 23-15-631. Instructions to absent electors; instructions as constituting substantive law.

(1) The registrar shall enclose with each ballot mailed to an absent elector separate printed instructions furnished by the registrar containing the following:

(a) All absentee voters, excepting those with temporary or permanent physical disabilities or those who are sixty-five (65) years of age or older, who mark their ballots in the county of the residence shall use the registrar of that county as the witness. The absentee voter shall come to the office of the registrar and neither the registrar nor his or her deputy shall be required to go out of the registrar's office to serve as an attesting witness.

(b) Upon receipt of the enclosed ballot, you will not mark the ballot except in view or sight of the attesting witness. In the sight or view of the attesting witness, mark the ballot according to instructions.

(c) After marking the ballot, fill out and sign the "ELECTOR'S CERTIFICATE" on the back of the envelope so that the signature is across the flap of the envelope to ensure the integrity of the ballot. All absent electors shall have the attesting witness sign the "ATTESTING WITNESS CERTIFICATE" across the flap on the back of the envelope. Place the necessary postage on the envelope and deposit it in the post office or some government receptacle provided for deposit of mail so that the absent elector's ballot will be postmarked on or before the date of the election and received by the registrar no more than five (5) business days after the election.

Any notary public, United States postmaster, assistant United States postmaster, United States postal supervisor, clerk in charge of a contract postal station, or other officer having authority to administer an oath or take an acknowledgment may be an attesting witness; provided, however, that in the case of an absent elector who is temporarily or permanently physically disabled, the attesting witness may be any person eighteen (18) years of age

or older and such person is not required to have the authority to administer an oath. If a postmaster, assistant postmaster, postal supervisor, or clerk in charge of a contract postal station acts as an attesting witness, his or her signature on the elector's certificate must be authenticated by the cancellation stamp of their respective post offices. If an officer having authority to administer an oath or take an acknowledgement acts as attesting witness, his or her signature on the elector's certificate, together with his or her title and address, but no seal, shall be required. Any affidavits made by an absent elector who is in the Armed Forces may be executed before a commissioned officer, warrant officer, or noncommissioned officer not lower in grade than sergeant rating or any person authorized to administer oaths.

(d) When the application accompanies the ballot it shall not be returned in the same envelope as the ballot but shall be returned in a separate preaddressed envelope provided by the registrar.

(e) A candidate for public office, or the spouse, parent or child of a candidate for public office, may not be an attesting witness for any absentee ballot upon which the candidate's name appears, unless the voter is related within the first degree to the candidate or the spouse, parent or child of the candidate.

(f) Any voter casting an absentee ballot who declares that he or she requires assistance to vote by reason of blindness, temporary or permanent physical disability or inability to read or write, shall be entitled to receive assistance in the marking of his or her absentee ballot and in completing the affidavit on the absentee ballot envelope. The voter may be given assistance by anyone of the voter's choice other than a candidate whose name appears on the absentee ballot being marked, the spouse, parent or child of a candidate whose name appears on the absentee ballot being marked or the voter's employer, an agent of that employer or a union representative; however, a candidate whose name is on the ballot or the spouse, parent or child of such candidate may provide assistance upon request to any voter who is related within the first degree. In order to ensure the integrity of the ballot, any person who provides assistance to an absentee voter shall be required to sign and complete the "Certificate of Person Providing Voter Assistance" on the absentee ballot envelope.

(2) The foregoing instructions required to be provided by the registrar to the elector shall also constitute the substantive law pertaining to the handling of absentee ballots by the elector and registrar.

(3) The Secretary of State shall prepare instructions on how absent voters may comply with the identification requirements of Section 23-15-563.

HISTORY: Derived from 1972 Code § 23-9-409 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, 3403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 203; Laws, 1987, ch. 499, § 12; Laws, 1999, ch. 420, § 3; Laws, 2000, ch. 592, § 10; Laws, 2006, ch. 574, § 18; Laws, 2012, ch. 526, § 6; Laws, 2017, ch. 441, § 187, eff from and after July 1, 2017; Laws, 2020, ch. 472, § 11, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1), in the introductory paragraph, substituted "mailed to" for "provided to,"; and in (c), substi-

tuted "elector's ballot will be postmarked on or before the date of the election and received by the registrar no more than five (5) business days after the election" for "elector's ballot, excepting presidential absentee ballots, will reach the registrar in which your precinct is located not later than 5:00 p.m. on the day preceding the date of the election."

OPINIONS OF THE ATTORNEY GENERAL

With regard to the name on the flap of an absentee ballot, even with the absence of the appearance of fraud, example (a) was unacceptable because there were no signature lines across the flap, no portion of the actual signature was written across the flap, and there was no attesting witness signature line or signature across the flap; further, example (b) was also unacceptable because there were no signature lines across the flap and there was no signature of an attesting witness. Reece, Oct. 6, 2000, A.G. Op. #2000-0571.

§ 23-15-633. Signatures of elector and attesting witness across flap of envelope.

OPINIONS OF THE ATTORNEY GENERAL

With regard to the name on the flap of an absentee ballot, even with the absence of the appearance of fraud, example (a) was unacceptable because there were no signature lines across the flap, no portion of the actual signature was written across the flap, and there was no attesting witness signature line or signature across the flap; further, example (b) was also unacceptable because there were no signature lines across the flap and there was no signature of an attesting witness. Reece, Oct. 6, 2000, A.G. Op. #2000-0571.

§ 23-15-635. Form of elector's certificate, attesting witness certification, and voter assistance certificate where voter is not absent voter as defined in the Armed Forces Absentee Voting Law.

(1) The form of the elector's certificate, attesting witness certification and certificate of person providing voter assistance on the back of the envelope used by absentee voters who are not absent voters as defined in Section 23-15-673, shall be as follows:

"ELECTOR'S CERTIFICATE

STATE OF _____

COUNTY OF _____

I, _____, under penalty of perjury do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the ____ day of,____ 2, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my ballot among the other ballots cast before such ballots are counted, and record my name on the poll list as if I were present in person and voted.

I further swear that I marked the enclosed ballot in secret. **Penalties for vote fraud are up to five (5) years in prison and a fine of up to Five Thousand Dollars ($5,000.00). (Miss. Code. Ann. Section 23-15-753.) Penalties for voter intimidation are up to one (1) year in jail and a fine of up to One Thousand Dollars ($1,000.00). (Miss. Code. Ann. Section 97-13-37.)**

_____

(Signature of voter)

CERTIFICATE OF ATTESTING WITNESS

Under penalty of perjury I affirm that the above named voter personally appeared before me, on this the ____ day of, 2____, and is known by me to be the person named, and who, after being duly sworn or having affirmed, subscribed the foregoing oath or affirmation. That the voter exhibited to me his or her blank ballot; that the ballot was not marked or voted before the voter exhibited the ballot to me; that the voter was not solicited or advised by me to vote for any candidate, question or issue, and that the voter, after marking his or her ballot, placed it in the envelope, closed and sealed the envelope in my presence, and signed and swore or affirmed the above certificate.

(Attesting witness) _____ (Address)

(Official title) _____ (City and State)

CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

(To be completed only if the voter has received assistance in marking the enclosed ballot.) I, under penalty of perjury, hereby certify that the above-named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write, and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions. **Penalties for vote fraud are up to five (5) years in prison and a fine of up to Five Thousand Dollars ($5,000.00). (Miss. Code. Ann. Section 23-15-753.) Penalties for voter intimidation are up to one (1) year in jail and a fine of up to One Thousand Dollars ($1,000.00). (Miss. Code. Ann. Section 97-13-37.)**

Signature of person providing assistance

Printed name of person providing assistance

Address of person providing assistance

Date and time assistance provided

Family relationship to voter (if any)"

(2) The envelope shall have printed on the flap on the back of the envelope in bold print and in a distinguishing color, the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

HISTORY: Derived from 1972 Code § 23-9-19 [(Codes, 1942, § 3196-10; Laws, 1942, ch. 202; Laws, 1954, ch. 359, § 10), repealed by Laws, 1972, ch. 490, § 604] and § 23-9-413 [(Codes, § 3203-403; Laws, 1972, ch. 490, § 403) repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 205; Laws, 1999, ch. 420, § 4; Laws, 2008, ch. 528, § 11; Laws, 2010, ch. 446, § 9, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 472, § 12, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1), in the introductory paragraph, substituted "envelope used by absentee voters who are not absent" for "envelope used by voters who do not use the registrar of their county of residence as an attesting witness and who are not absent," and in the Elector's Certificate, substituted "County of" for "County or Parish of"; in (2), deleted "used pursuant to this section shall not contain the form prescribed pursuant to Section 23-15-719 and" following "The envelope"; and made gender neutral changes throughout.

§ 23-15-637. Timely casting of ballots.

(1)(a) Absentee ballots and applications received by mail, except for fax or electronically transmitted ballots as otherwise provided by Section 23-15-699 for UOCAVA ballots, must be postmarked on or before the date of the election and received by the registrar no more than five (5) business days after the election; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted.

(b) All ballots cast by the absent elector appearing in person in the office of the registrar shall be cast with an absentee paper ballot and deposited into a sealed ballot box by the voter, not later than 12:00 noon, or 5:00 p.m. during the year 2020 on the Saturday immediately preceding elections held

on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days. At the close of business each day at the office of the registrar, the ballot box used shall be sealed and not unsealed until the beginning of the next business day, and the seal number shall be recorded with the number of ballots cast which shall be stored in a secure location in the registrar's office.

(2) The registrar shall deposit all absentee ballots which have been timely cast and received by mail in a secured and sealed box in a designated location in the registrar's office upon receipt. The registrar shall not send any absentee ballots to the precinct polling locations.

(3) The Secretary of State shall promulgate rules and regulations necessary to ensure that when a qualified elector who is qualified to vote absentee votes by absentee ballot, either by mail or in person with a regular paper ballot, that person's absentee vote is final and he or she may not vote at the polling place on election day. Notwithstanding any other provisions of law to the contrary, the Secretary of State shall promulgate rules and regulations necessary to ensure that absentee ballots shall remain in the registrar's office for counting and not be taken to the precincts on election day.

HISTORY: Derived from 1972 Code § 23-9-415 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 206; Laws, 2012, ch. 465, § 4, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 472, § 1, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, rewrote the former first sentence, which read: "Absentee ballots received by mail, except presidential ballots as provided for in Sections 23-15-731 and 23-15-733 and except as otherwise provided by Section 23-15-699, must be received by the registrar by 5:00 p.m. on the date preceding the election; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted" and designated it (1)(a); designated the former second sentence as (1)(b), and therein inserted "with an absentee paper ballot and deposited into a sealed ballot box by the voter" and "or 5:00 p.m. during the year 2020," and added the last sentence; rewrote the former last sentence, which read: "The registrar shall deposit all absentee ballots which have been timely cast in the ballot boxes upon receipt" and designated it (2), and therein added the last sentence; and added (3).

OPINIONS OF THE ATTORNEY GENERAL

No authority can be found that would allow a county registrar to open the ballot box and retrieve an absentee ballot cast in one party primary election and then allow the voter to cast another ballot in another party primary. Dill, July 29, 2003, A.G. Op. 03-0363.

The failure to strictly comply with statutory provisions regarding the examination and counting of absentee ballots by poll workers should not serve to invalidate lawfully cast ballots and to disenfranchise the voters, and absentee ballots in question should be counted. Newton County Election Commission, Nov. 7, 2003, A.G. Op. 03-0620.

§ 23-15-639. Examination, processing and counting of all absentee ballots at the opening and closing of polls.

(1) The examination and counting of all absentee ballots shall be conducted as follows:

(a) At the opening of the regular balloting and at the opening of the polls, the resolution board established under Section 23-15-523 and trained in the process of canvassing absentee ballots shall first take the envelopes containing the absentee ballots of such electors from the secure location at the circuit clerk's office, and the name, address and precinct inscribed on each envelope shall be announced by the election managers.

(b) The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the resolution board find that the applicant is a registered and qualified voter or otherwise qualified to vote, the envelope shall then be opened and the ballot removed from the envelope, without its being unfolded, or permitted to be unfolded or examined.

(c) Having observed and found the ballot to be regular as far as can be observed from its official endorsement, the resolution board shall deposit it in the ballot box with the other ballots before counting any ballots and enter the voter's name in the receipt book provided for that purpose. All absentee ballots received prior to 7:00 p.m. the day before the election shall be counted in the registrar's office by the resolution board when the polls close and then added to the votes cast in each precinct. All absentee ballots received after 7:00 p.m. the day before the election but not later than the fifth business day after the election shall be processed by the resolution board.

(2) The resolution board shall also take such action as may be prescribed by the Secretary of State to ensure compliance with the identification requirements of Section 23-15-563.

(3) The resolution board shall process the absentee ballots using the procedure provided in subsection (1) of this section.

HISTORY: Derived from 1972 Code § 23-9-417 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 207; Laws, 1993, ch. 528, § 9; Laws, 2006, ch. 574, § 19; Laws, 2012, ch. 526, § 7, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965); Laws, 2020, ch. 472, § 13, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1), in the introductory paragraph, deleted "In elections in which direct recording electronic voting systems are not utilized" from the beginning and made a related change, and inserted "all," rewrote (a), which read: "At the close of the regular balloting and at the close of the polls, the election managers of each voting precinct shall first take the envelopes containing the absentee ballots of such electors from the box, and the name, address and precinct inscribed on each envelope shall be announced by the election managers," in (b), in the second sentence, substituted "resolution board" for "election managers" and deleted "and that he has not appeared in person and voted at the election" following

"qualified to vote," rewrote (c), which read: "Having observed and found the ballot to be regular as far as can be observed from its official endorsement, the election managers shall deposit it in the ballot box with the other ballots before counting any ballots and enter the voter's name in the receipt book provided for that purpose and mark "VOTED" in the pollbook or poll list as if he had been present and voted in person. If voting machines are used, all absentee ballots shall be placed in the ballot box before any ballots are counted, and the election managers in each precinct shall immediately count such absentee ballots and add them to the votes cast in the voting machine or device"; deleted former (2), which related to the conduct of the examination and counting of absentee ballots in elections in which direct recording electronic voting systems are used; redesignated former (3) as (2), and therein substituted "resolution board" for "election managers"; and added (3).

OPINIONS OF THE ATTORNEY GENERAL

The failure to strictly comply with statutory provisions regarding the examination and counting of absentee ballots by poll workers should not serve to invalidate lawfully cast ballots and to disenfranchise the voters, and absentee ballots in question should be counted. Newton County Election Commission, Nov. 7, 2003, A.G. Op. 03-0620.

§ 23-15-641. Grounds for rejection of ballots; procedure.

(1) For all absentee votes received by mail, if an affidavit or the certificate of the officer before whom the affidavit is taken is required and such affidavit or certificate is found to be insufficient, or if it is found that the signatures do not correspond, or that the applicant is not a duly qualified elector in the precinct, or otherwise qualified to vote, or that the ballot envelope is open or has been opened and resealed, or the voter is not eligible to vote absentee, the previously cast vote shall not be allowed. Without opening the voter's envelope the resolution board shall mark across its face "REJECTED", with the reason therefor.

(2) For all absentee votes received by mail, if the ballot envelope contains more than one (1) ballot of any kind, the ballot shall not be counted but shall be marked "REJECTED", with the reason therefor, and the registrar shall promptly notify the voter of such rejection. The voter's envelopes and affidavits, and the voter's envelope with its contents unopened, when such vote is rejected, shall be retained and preserved in the same manner as other ballots at the election. Such votes may be challenged in the same manner and for the same reasons that any other vote cast in such election may be challenged.

(3) If an affidavit is required and the officials find that the affidavit is insufficient, or if the officials find that the absentee voter is otherwise disqualified to vote, the envelope shall not be opened and a commissioner or executive committee member shall write across the face of the envelope "REJECTED" giving the reason therefor, and the registrar shall promptly notify the voter of such rejection.

(4) The ballots marked "REJECTED" shall be placed in a separate envelope in the secure ballot transfer case and delivered to the officials in charge of conducting the election at the central tabulation point of the county.

(5) All electors voting absentee shall be provided with written information

to inform the person how to ascertain whether his or her ballot was counted and, if rejected, the reason therefor.

HISTORY: Derived from 1972 Code § 23-9-419 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490. § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 208; Laws, 1993, ch. 528, § 11; Laws, 2006, ch. 574, § 20, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 472, § 14, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1), added "For all absentee votes received by mail," deleted "or that the voter is present and has voted within the precinct where he represents himself to be a qualified elector, or otherwise qualified to vote, on the date of the election at such precinct" preceding "the previously cast vote shall not be allowed" and rewrote the last sentence, which read: "Without opening the voter's envelope the commissioners of election, designated executive committee members or election managers, as appropriate, shall mark across its face "REJECTED", with the reason therefor"; in (2), in the first sentence, added "For all absentee votes received by mail" and "and the registrar shall promptly notify the voter of such rejection"; and added (5).

§ 23-15-645. Processing and tallying of absentee ballots cast in registrar's office and received by mail that are deposited into sealed ballot box; preservation of materials relative to absentee voters; return of materials to registrar; disposal of unused ballots.

(1) Absentee ballots cast in the registrar's office and received by mail that are deposited into a sealed ballot box shall be processed on election day but not tallied until after closing of the polls and announced simultaneously with all other votes cast on election day.

(2) After the votes have been counted, the officials shall preserve all applications, envelopes and the list of absent voters along with the mailed paper and paper ballots and other election materials and return the same to the registrar.

(3) Notwithstanding any other provision of law to the contrary, for federal and presidential general, special or primary elections, packages of protested, void and wholly blank ballots, voted ballots, open packages of unused ballots, sealed packages of unused ballots, and all absentee and military ballots and ballot envelopes, if any, shall be preserved for twenty-two (22) months after the date of any such general, special or primary election. For all other statewide, county or municipal elections, sealed packages of unused ballots, packages of protested, void and wholly blank ballots, open packages of unused ballots and all absentee and military ballots and ballot envelopes shall be retained for four (4) months, and may then be destroyed, provided a certificate articulating the election district identifying data and numbers of such ballots is filed with the balance of ballots described in this section, for the balance of the twenty-two-month retention period.

HISTORY: Derived from 1972 Code § 23-9-423 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 210, eff from and after January 1, 1987; Laws, 2020, ch. 472, § 3, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, added (1); designated the existing provisions as (2); in (2), inserted "mailed paper and paper"; and added (3).

§ 23-15-647. Disposition of absentee ballots received after applicable deadlines.

The registrar shall keep safely and unopened all official absentee ballots which are received by mail after the applicable cutoff period establishing its validity. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar after the cutoff time shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election.

HISTORY: Derived from 1972 Code § 23-9-425 [Codes, 1942, § 3203-404; Laws, 1972, ch. 490, § 404; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 211, eff from and after January 1, 1987; Laws, 2020, ch. 472, § 15, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in the first sentence, substituted "received by mail after" for "received subsequent to."

§ 23-15-649. Preparation and printing of absentee voter ballots.

For all elections, the election officials shall prepare and print, as soon as the deadline for the qualification of candidates has passed or forty-five (45) days before the election, whichever is later, official ballots for each voting precinct to be known as absentee voter ballots, which ballots shall be prepared and printed in the same form and shall be of the same size and texture as the regular official ballot except that they shall be printed on tinted paper of a tint different from that of the regular official ballot or with a header of different tint.

HISTORY: Derived from 1972 Code § 23-9-427 [Codes, 1942, § 3203-405; Laws, 1972, ch. 490, § 405; Laws, 1984, ch. 401, § 3; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 212, eff from and after January 1, 1987; Laws, 2020, ch. 472, § 4, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, substituted "For all elections, the election officials shall prepare and print, as soon as" for "For all elections, there shall be prepared and printed by the officials charged with this duty with respect to the election, as soon as," substituted "forty-five (45) days before" for "forty-five (45) days of," and added "or with a header of different tint" at the end.

§ 23-15-651. Announcement of results of vote by absentee balloting.

The results of the vote by absentee balloting shall be announced simultaneously with the vote cast on election day; provided that absentee ballots received after 7:00 p.m. the day before the election shall be kept in a secured and sealed ballot box, and shall be announced after the five-business-day period for receiving absentee ballots.

HISTORY: Derived from 1972 Code § 23-9-429 [Codes, 1942, § 3203-406; Laws, 1972, ch. 490, § 406; repealed by Laws, 1986, ch. 495, § 341]; Laws, 1986, ch. 495, § 213, eff from and after January 1, 1987; Laws, 2020, ch. 472, § 2, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, added the proviso.

SUBARTICLE B.

ARMED SERVICES ABSENTEE VOTING LAW.

Sec.

23-15-699. Transmission of absentee ballots and balloting materials to absent voters and receipt of voted absentee ballots, federal postcard applications and Federal Write-In-Absentee Ballots by mail, facsimile or electronic mail delivery.

§ 23-15-691. Prompt distribution of absentee ballot materials; separation of envelope and other materials; instructions as to notation on envelope and use of ink or indelible pencil.

OPINIONS OF THE ATTORNEY GENERAL

A municipal party executive committee may not hear or act on a petition challenging a candidate's qualifications that is filed after the statutory deadline of ten days after the qualifying deadline. McInnis, Apr. 13, 2005, A.G. Op. 05-0185.

§ 23-15-699. Transmission of absentee ballots and balloting materials to absent voters and receipt of voted absentee ballots, federal postcard applications and Federal Write-In-Absentee Ballots by mail, facsimile or electronic mail delivery.

(1) Absent voters who have requested to receive absentee ballots and balloting materials may choose to receive such ballots and balloting materials by mail, facsimile device (FAX) or electronic mail delivery (e-mail). The Secretary of State shall establish procedures that allow an absent voter to make the choice authorized by this subsection.

(2) Consistent with the choice that the absent voter exercises pursuant to

subsection (1) of this section, the registrar shall, in addition to mail, be authorized to use electronic facsimile (FAX) devices and electronic mail delivery (e-mail) to transmit balloting materials and absentee ballots. If the absent voter does not indicate a preference, delivery of such information shall be by mail.

(3) The registrar is authorized to receive by electronic facsimile (FAX) devices and electronic mail delivery (e-mail):

(a) Voted absentee ballots;

(b) Completed federal postcard applications as described in Section 23-15-677, which shall serve to request absentee ballots or to register to vote or to do both simultaneously; and

(c) Completed Federal Write-In-Absentee Ballots as described in Section 23-15-692.

(4) Once the registrar has received a voted absentee ballot pursuant to this section, he shall place the ballot in an absentee ballot envelope designated for absentee ballots under this subarticle and fill out the required information on the envelope. The registrar shall then notate on the envelope that the ballot was received under this section and a signature across the flap of the envelope shall not be required. Except as provided in this section, absentee ballots received under this subsection shall be treated in the same manner as other absentee ballots received under this subarticle.

(5) Access to voted absentee ballots before they are placed in an absentee ballot envelope shall be strictly limited to election officials who must process the ballot and any election official who views the ballots before they are placed in the envelope shall have the duty to protect the secrecy of the ballot choices; however, the failure of an election official to comply with this subsection shall not invalidate the ballot.

(6) Each circuit clerk shall furnish a suitable electronic mail delivery (e-mail) address that can be used to allow absent voters to comply with the provisions of this subarticle. Absentee ballots returned by mail by any absent voter as defined in Section 23-15-673 must be received by the registrar by the deadline for receipt of mail absentee ballots provided for in Section 23-15-637.

HISTORY: Laws, 1993, ch. 528, § 13; Laws, 2000, ch. 519, § 6; Laws, 2010, ch. 446, § 6; Laws, 2012, ch. 465, § 3, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 472, § 16, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (6), rewrote the last sentence, which read: "Absentee ballots returned by any absent voter as defined in Section 23-15-673 must be received by the registrar by 7:00 p.m. on the date of the election."

SUBARTICLE C.

ABSENTEE VOTER LAW.

Sec.

23-15-713. Electors qualified to vote as absentees.

Sec.
23-15-715. Applications for absentee ballots.
23-15-719. Delivery of ballots to applicant; completion of ballots; affidavit; delivery of ballots to registrar.
23-15-721. Procedures applicable to electors temporarily residing outside county and to electors who are physically disabled; mailing of ballots to registrar.

§ 23-15-713. Electors qualified to vote as absentees.

For the purpose of this subarticle, any duly qualified elector may vote as provided in this subarticle if the elector falls within at least one (1) of the following categories:

(a) Any qualified elector who is a bona fide student, teacher or administrator at any college, university, junior college, high, junior high, or elementary grade school whose studies or employment at such institution necessitates his or her absence from the county of his or her voting residence on the date of any primary, general or special election, or the spouse and dependents of that student, teacher or administrator if such spouse or dependent(s) maintain a common domicile, outside of the county of his or her voting residence, with such student, teacher or administrator.

(b) Any qualified elector who is required to be away from his or her place of residence on any election day due to his or her employment as an employee of a member of the Mississippi congressional delegation and the spouse and dependents of such person if he or she shall be residing with such absentee voter away from the county of the spouse's voting residence.

(c) Any qualified elector who is away from his or her county of residence on election day for any reason.

(d) Any person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself, herself or others, or whose attendance at the voting place could reasonably cause danger to himself, herself or others. For purposes of this paragraph (d), "temporary physical disability" shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19 beginning with July 8, 2020 and the same being repealed on December 31, 2020.

(e) The parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside of his or her county of residence or more than fifty (50) miles distant from his or her residence, if the parent, spouse or dependent will be with such person on election day. For purposes of this paragraph (e), "temporary physical disability" shall include any qualified elector who is under a physician-imposed quarantine due to COVID-19 during the year 2020 or is caring for a dependent who is under a physician-imposed quarantine due to COVID-19 beginning with July 8, 2020 and the same being repealed on December 31, 2020.

(f) Any person who is sixty-five (65) years of age or older.

(g) Any member of the Mississippi congressional delegation absent from Mississippi on election day, and the spouse and dependents of such member of the congressional delegation.

(h) Any qualified elector who will be unable to vote in person because he or she is required to be at work on election day during the times at which the polls will be open.

HISTORY: Derived from 1972 Code § 23-9-603 [Codes, 1942, § 3203-302; Laws, 1972, ch. 490, § 302; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 230; Laws, 1986, ch. 495, § 230; Laws, 1993, ch. 528, § 7, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section); Laws, 2020, ch. 472, § 6, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in the introductory paragraph, substituted "the elector" for "he be one who" and inserted "at least one (1) of"; in (a), substituted "that student" for "said student"; in (d), added the last sentence; in (e), added the last sentence; and made gender neutral changes throughout.

§ 23-15-715. Applications for absentee ballots.

Any elector desiring an absentee ballot as provided in this subarticle may secure same if:

(a) Not more than forty-five (45) days nor later than 12:00 noon, or 5:00 p.m. during the year 2020, on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days, he shall appear in person before the registrar of the county in which he resides, or for municipal elections he shall appear in person before the city clerk of the municipality in which he resides and, when the elector so appears, he shall execute and file an application as provided in Section 23-15-627 and vote by absentee ballot, except that if the ballot has not been printed by forty-five (45) days preceding the election, the elector may appear and file an application anytime before the election. Then the absentee ballot shall be mailed by the circuit clerk to the elector as soon as the ballot has been printed.

(b) Within forty-five (45) days next prior to any election, any elector who cannot comply with paragraph (a) of this section by reason of temporarily residing outside the county, or any person who has a temporary or permanent physical disability, persons who are sixty-five (65) years of age or older, or any person who is the parent, spouse or dependent of a temporarily or permanently physically disabled person who is hospitalized outside of his county of residence or more than fifty (50) miles away from his residence and such parent, spouse or dependent will be with such person on election day, may make application for an absentee ballot by mailing the appropriate application to the registrar. Only persons temporarily residing out of the county of their residence, persons having a temporary or permanent physical

disability, persons who are sixty-five (65) years of age or older, or any person who is the parent, spouse or dependent of a temporarily or permanently physically disabled person who is hospitalized outside of his county of residence or more than fifty (50) miles away from his residence, and such parent, spouse or dependent will be with such person on election day, may obtain absentee ballots by mail under the provisions of this subsection and as provided by Section 23-15-713. Applications of persons temporarily residing outside the county shall be sworn to and subscribed before an official who is authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter, said application to be accompanied by such verifying affidavits as required by this chapter. The applications of persons having a temporary or permanent physical disability shall not be required to be accompanied by an affidavit but shall be witnessed and signed by a person eighteen (18) years of age or older. The registrar shall send to such absent voter a proper absentee voter ballot within twenty-four (24) hours, or as soon thereafter as the ballots are available, containing the names of all candidates who qualify or the proposition to be voted on in such election, and with such ballot there shall be sent an official envelope containing upon it in printed form the recitals and data hereinafter required.

(c) Except when the voter has requested a runoff ballot on the initial absentee ballot application, upon request for a runoff ballot pursuant to Section 23-15-719, the registrar shall mail together the absentee ballot application and the absentee ballot to the absent voter for the runoff election.

HISTORY: Derived from 1972 Code § 23-9-605 [Codes, 1942, § 3203-303; Laws, 1972, ch. 490, § 303; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 231; Laws, 1986, ch. 495, § 231; Laws, 1993, ch. 528, § 8, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section); Laws, 2020, ch. 472, § 7, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (a), inserted "or 5:00 p.m. during the year 2020"; and added (c).

OPINIONS OF THE ATTORNEY GENERAL

A circuit clerk may send only the application and upon receipt of the completed application mail the ballot. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

If a circuit clerk sends both the application and the ballot simultaneously and the materials return with errors, the clerk doe not have authority to send a second absentee ballot. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

The circuit clerk does not have any authority to determine the validity of absentee ballots; the clerk is required to place absentee ballots in the ballot boxes upon receipt, and it is the responsibility of the poll workers to determine the validity of the ballots. Allen, Oct. 24, 2003, A.G. Op. 03-0555.

§ 23-15-719. Delivery of ballots to applicant; completion of ballots; affidavit; delivery of ballots to registrar.

(1) Except where the registrar has already mailed a ballot with an application, upon receipt of a properly completed application form by an elector qualified to vote absentee as provided in this article, the registrar shall mail the absent voter an absentee ballot within one (1) business day, or as soon as the absentee ballot is prepared and available, containing the names of all the candidates and propositions, if any, to be voted on in the election. The registrar shall include with the absentee ballot an official envelope that complies with the provisions of this article, as well as information to comply with Section 23-15-641(3) related to the status of the elector's ballot. The registrar shall identify the applicant by requiring him to present identification as required by Section 23-15-563, and shall then deliver the ballots to the applicant by mail or to the applicant in the registrar's office. The registrar shall not personally hand deliver ballots to voters. After the applicant has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him by the registrar.

After the absentee voter has sealed the envelope, he or she shall subscribe and swear to an affidavit and mail the ballot to the address provided on the absentee ballot official envelope. The affidavit shall be in the following form, which shall be printed on the back of the envelope containing the applicant's ballot:

"STATE OF MISSISSIPPI
COUNTY OF _____

I, _____, do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the ____ day of _____, 2____, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my ballot among the other ballots cast before such ballots are counted, and record my name on the poll list as if I were present in person and voted.

I further swear that I marked the enclosed ballot in secret.

_____
(Signature of voter)

SWORN TO AND SUBSCRIBED before me, _____, this the ____ day of _____, 2____.

(Registrar) _____
(Registrar)"

After the completion of the requirements of this section, the elector shall deliver the envelope containing the ballot to the registrar.

(2) If the voter has received assistance in marking his ballot, the person providing the assistance shall complete the following form which shall be printed on the back of the envelope containing the applicant's ballot:

"CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

(To be completed only if the voter has received assistance in marking the enclosed ballot.) I hereby certify that the above-named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write, and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions.

_____

Signature of person providing assistance

_____

Printed name of person providing assistance

_____

Address of person providing assistance

_____

Date and time assistance provided

_____

Family relationship to voter (if any)"

(3) The envelope used pursuant to this section shall not contain the form prescribed by Section 23-15-635 and shall have printed on the flap on the back of the envelope in bold print and in a distinguishing color, the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

HISTORY: Derived from 1972 Code § 23-9-611 [Codes, 1942, § 3203-306; Laws, 1972, ch. 490, § 306; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 233; Laws, 1999, ch. 420, § 5; Laws, 2008, ch. 528, § 13; Laws, 2012, ch. 526, § 8, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965); Laws, 2020, ch. 472, § 8, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1), in the first paragraph, deleted the former first sentence, which read: "Immediately upon completion of an application filed pursuant to the provisions of paragraph (a) of Section 23-15-715, the registrar shall deliver the necessary ballots to the applicant," added the present first and second sentences, in the fourth sentence, deleted "unless he delivers the ballots in the office of the registrar," following "voters" at the end, and deleted the former next-to-last sentence, which read: "The elector shall fill in his ballot in secret," and rewrote the second paragraph, which read: "After he has sealed the envelope, he shall subscribe and swear to an affidavit in the following form, which shall be printed on the back of the envelope containing the applicant's ballot."

OPINIONS OF THE ATTORNEY GENERAL

No authority can be found that would allow a county registrar to open the ballot box and retrieve an absentee ballot cast in one party primary election and then allow the voter to cast another ballot in another party primary. Dill, July 29, 2003, A.G. Op. 03-0363.

A voter who cast an absentee ballot in one party's primary may not lawfully cast a regular ballot in another party's primary. Dill, July 29, 2003, A.G. Op. 03-0363.

The list of voters who vote by absentee ballot is a public record. Therefore, it is permissible to furnish the election managers in one party's primary with a list of individuals who cast absentee ballots in another party's primary. Dill, July 29, 2003, A.G. Op. 03-0363.

§ 23-15-721. Procedures applicable to electors temporarily residing outside county and to electors who are physically disabled; mailing of ballots to registrar.

(1) Absentee ballots requested under the provisions of Section 23-15-715 for electors temporarily residing outside the county of residence shall be mailed to the elector's address outside of the county in which he or she is registered, and such electors shall appear before any official authorized to administer oaths or other official authorized to witness absentee balloting as provided in this article. The elector shall exhibit to such official his or her absentee ballot unmarked and thereupon proceed in secret to fill in the ballot. After the elector has properly marked the ballot and properly folded it, he or she shall deposit it in the envelope furnished him or her. After the elector has sealed the envelope he or she shall deliver it to the official before whom he or she is appearing and shall subscribe and swear to the elector's certificate provided for in Section 23-15-635, which affidavit shall be printed on the back of the envelope as provided for in Section 23-15-635 containing the elector's ballot.

(2) Electors who are temporarily or permanently physically disabled shall sign the elector's certificate and the certificate of attesting witness shall be signed by any person eighteen (18) years of age or older.

(3) After the completion of the requirements of this section, the elector shall mail the envelope containing the ballot to the registrar in the county wherein the elector is qualified to vote. The ballots must be postmarked by the date of the election and received by the registrar no more than five (5) business days after the election to be counted; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted.

HISTORY: Derived from 1972 Code § 23-9-613 [Codes, 1942, § 3203-307; Laws, 1972, ch. 490, § 307; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 234; Laws, 2012, ch. 465, § 5, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 472, § 17, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in (1), rewrote the first sentence, which read: "Electors temporarily residing outside the county and

obtaining an absentee ballot under the provisions of paragraph (b) of Section 23-15-715 shall appear before any official authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter," added "containing the elector's ballot," and made gender neutral changes; and in (3), rewrote the second sentence, which read: "Except as otherwise provided by Section 23-15-699 and excluding presidential ballots as provided for in Sections 23-15-731 and 23-15-733, the ballots must be received by the registrar prior to 5:00 p.m. on the day preceding the election to be counted"; and made other minor changes.

SUBARTICLE D.

PROVISION APPLICABLE TO PRESIDENTIAL ELECTION.

Sec.

23-15-731. General provisions.
23-15-733. Disposition of ballots received after the deadline for receipt of mail absentee ballots.
23-15-735. Delivery of absentee ballots to voters in person.

§ 23-15-731. General provisions.

Any presidential absentee ballots received in the mail by the registrar after the delivery of ballot boxes to the election managers and before the deadline for receipt of absentee ballots provided for in Section 23-15-637 shall be retained by the registrar and shall be delivered, together with the applications of the qualified absentee elector to an election official designated to receive them. The registrar shall receive a receipt from the designated election official for all such ballots and applications delivered. The designated election officials shall, upon the canvassing of the returns, count such ballots as if delivered to the proper precincts and such ballots shall be considered valid for all purposes as if they had been actually deposited in the proper precinct ballot boxes. The appropriate election officials shall examine the affidavit of each envelope. If the officials are satisfied that the affidavit is sufficient and that the absentee voter is otherwise qualified to vote, an official shall announce the name of the voter and shall give any person present an opportunity to challenge in like manner and for the same cause as the voter could have been challenged had he or she presented himself or herself personally in such precinct to vote. The ineligibility of the voter to vote by absentee ballot shall be a ground for a challenge. The officials shall consider any absentee voter challenged when a person has previously filed a written challenge of such voter's right to vote. The election officials shall handle any such challenge in the same manner as other challenged ballots are handled, and if the challenge is not affirmed, the officials shall then open the envelope. The officials shall then open the envelope in such manner as not to destroy the affidavit printed thereon and shall deposit the ballot marked "OFFICIAL ABSENTEE BALLOT," in a ballot box reserved for absentee ballots. The commissioners shall endorse on their pollbooks a proper notation to indicate that the absentee voter has voted in such election by absentee ballot.

HISTORY: Derived from § 23-11-15 [Codes, 1942, § 3203-105; Laws, 1972, ch. 490, § 105; repealed by Laws, 1986, ch. 495, § 345]; en, Laws, 1986, ch. 495, § 235, eff from and after January 1, 1987; Laws, 2020, ch. 472, § 18, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, rewrote the first sentence, which read: "Any presidential absentee ballots received by the registrar subsequent to the delivery of ballot boxes to the election managers and prior to the time for the closing of the polls on election day shall be retained by the registrar and shall be delivered, together with the applications of the qualified absentee elector to an election official designated to receive them"; and made gender neutral changes.

§ 23-15-733. Disposition of ballots received after the deadline for receipt of mail absentee ballots.

The registrar shall keep safely and unopened all official presidential absentee ballots which are received subsequent to the deadline for receipt of mail absentee ballots provided for in Section 23-15-637. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election. Such information shall be processed through the Statewide Election Management System.

HISTORY: Derived from 1972 Code § 23-11-7 [Codes, 1942, § 3203-105; Laws, 1972, ch. 490, § 105; repealed by Laws, 1986, ch. 495, § 345]; en, Laws, 1986, ch. 495, § 236; Laws, 2012, ch. 471, § 5, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2020, ch. 472, § 19, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, in the first sentence, substituted "subsequent to the deadline for receipt of mail absentee ballots provided for in Section 23-15-637" for "subsequent to the election."

§ 23-15-735. Delivery of absentee ballots to voters in person.

Except for ballots voted in person at the office of the registrar, absentee ballots shall not be delivered in person to an absentee voter or to any other person.

HISTORY: Laws, 1993, ch. 528, § 14, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the addition of this section); Laws, 2020, ch. 472, § 20, eff from and after passage (approved July 8, 2020).

Amendment Notes — The 2020 amendment, effective July 8, 2020, rewrote the section, which read: "Absentee ballots shall not be delivered in person to an absentee voter or to any other person except when an absentee voter shall have properly received an absentee ballot pursuant to Section 23-15-719."

ARTICLE 23.

DISCLOSURE OF CAMPAIGN FINANCES.

§ 23-15-811. Penalties.

OPINIONS OF THE ATTORNEY GENERAL

The prescribed sanctions of subsections (c) & (d) are applicable once the deadline passes and the candidate has not filed the required report. Artigues, Jr., Feb. 18, 2000, A.G. Op. #2000-0060.

A city by and through the board of aldermen has an affirmative duty to comply with subsection (d) by withholding the payment of any salary or other remuneration until the offending official files all delinquent reports. Artigues, Jr., Feb. 18, 2000, A.G. Op. #2000-0060.

A candidate who ultimately files all required reports is entitled to retain any compensation paid while the candidate was delinquent in filing reports; likewise, a candidate who ultimately files all delinquent reports would be entitled to any compensation withheld pursuant to subsection (d). Artigues, Jr., Feb. 18, 2000, A.G. Op. #2000-0060.

ARTICLE 25.

VACANCIES IN OFFICE.

§ 23-15-833. Special elections to fill vacancies in county, county district, and district attorney offices, and office of circuit judge or chancellor.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 23-15-833 designates first Tuesday after first Monday in November of each year as "regular special election day." Higginbotham, May 12, 1993, A.G. Op. #93-0323.

Although a vacancy on a county board of supervisors will be filled pursuant to special election proceedings under this section, Miss. Code Section 23-15-839 requires that the remaining board members appoint an eligible person to serve the remaining portion of the unexpired term until the special election is conducted. Smith, Aug. 29, 1997, A.G. Op. #97-0536.

§ 23-15-837. Procedure where only one person has qualified for candidacy in special election for state district office or legislative office.

OPINIONS OF THE ATTORNEY GENERAL

Since the special charter of the City of Columbus does not require that primaries be held to fill a vacancy of a municipal office, and there is no statutory requirement of such, there is no authority for primary elections to be held to fill a vacant councilman's seat. Wallace, August 14, 1998, A.G. Op. #98-0501.

§ 23-15-839. Appointments to fill vacancies in county or county district offices; special election procedures; procedure where only one person has qualified for candidacy in special election.

OPINIONS OF THE ATTORNEY GENERAL

Vacancy on county board of supervisors must be filled in accordance with Miss. Code Section 23-15-839 which requires remaining members of board of supervisors to appoint eligible person to serve on interim basis until special election is conducted to elect someone to serve remainder of term. Higginbotham, May 12, 1993, A.G. Op. #93-0323.

Miss. Code Section 23-15-839 sets forth procedure for conducting special elections to fill vacancies in county and district offices. Mosley, June 3, 1993, A.G. Op. #93-0391.

Although a vacancy on a county board of supervisors will be filled pursuant to special election proceedings under Miss. Code Section 23-15-833, this section requires that the remaining board members appoint an eligible person to serve the remaining portion of the unexpired term until the special election is conducted. Smith, Aug. 29, 1997, A.G. Op. #97-0536.

When a justice court judge resigns, the vacancy should be filled in accordance with this section; Section 9-11-31 is to be used only when the justice court judge's office is temporarily vacant due to suspension or disability. Sherard, July 22, 1999, A.G. Op. #99-0128.

If in a special election for county election commissioner there is only one qualified candidate, then by following the provisions of Section 23-15-839(2) the election commission may dispense with the special election without regard to a general election for county school board member offices. Sanford, July 15, 2005, A.G. Op. 05-0315.

If it is determined that a candidate for the office of justice court judge is a resident of the district he seeks to serve and is a registered voter of the county and is not otherwise disqualified, he would be entitled to have his name placed on the ballot even if the address given on his qualifying papers does not match his actual residence. Dillon, Sept. 23, 2005, A.G. Op. 05-0490.

§ 23-15-857. Appointments to fill vacancies in elective offices in cities, towns, or villages; elections to fill such offices; procedure where no person or only one person has qualified as candidate.

JUDICIAL DECISIONS

5. Special elections.

While the special tribunal correctly found that a special election was required, it erred in excluding a losing candidate from the special election because a general election had already occurred and the statutes at issue did not limit a special election to certain candidates. Randle v. Ivy, 268 So. 3d 530, 2019 Miss. LEXIS 51 (Miss. 2019).

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 23-15-857(1) means City Council shall appoint, and Mayor shall confirm or veto, appointment of replacement for vacant City Council seat. Schissel, Apr. 28, 1993, A.G. Op. #93-0289.

The statute applies to special elections to fill vacancies in municipal offices; it does not apply to municipal general elections. Hatcher, Mar. 23, 2001, A.G. Op. #01-0163.

There is no authority for an appointment to fill a vacancy where the unexpired term exceeds six months. Hatcher, Mar. 23, 2001, A.G. Op. #01-0163.

If a town forgoes holding a general election in the event no person qualifies to run in that election, the incumbent officials would hold over after the expiration of their regular terms of office until such time as new officers are elected; further any action taken by those officers during this hold-over period would be valid and binding as official acts. Craft, Apr. 27, 2001, A.G. Op. #01-0254.

As the Special Charter of a city contains provisions which establish the time frame in which a special election to fill a vacancy shall be held, there is no need to refer to general law, and the provisions of the Charter would control. Alexander, May 30, 2003, A.G. Op. 03-0269.

If only one person qualifies to run for office to fill a vacancy in a special charter municipality as of the day after the date established for qualification, the governing authorities of the city would have the authority to fill the vacancy by appointment of the person who has qualified, without having the election. Alexander, May 30, 2003, A.G. Op. 03-0269.

Any action taken or votes cast concerning municipal matters prior to receiving preclearance of a special election by an alderman elected in said election would be valid. Ferrell, Oct. 20, 2003, A.G. Op. 03-0547.

Where a vacancy exists on a town board of alderman which has persisted for several months without being filled as required by this section, and a quorum of the board has failed to meet to conduct the necessary business of the town, as a way of moving the apparent impasse, the mayor should set at the next and subsequent meetings of the board as the first item on the agenda the matter of filling the vacancy on the board by declaring the vacancy and ordering a special election to be held between 30 and 45 calendar days after the date of the order and fill the vacancy. Tanner, Apr. 16, 2004, A.G. Op. 04-0145.

An incumbent alderman who served for the preceding term in an office for which no candidate has filed a valid qualifying petition for the upcoming term could "hold over" in accordance with Sections 21-15-1 and 25-1-7, until a special election to fill a vacancy is held as required by Section 23-15-857, assuming his bond remains in effect. Wiggins, May 6, 2005, A.G. Op. 05-0216.

A candidate could establish his residence within the corporate limits 30 days before the election and then file his qualifying papers at least 20)days prior to the municipal special election and be eligible to have his name placed on the ballot. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

Where a city charter does not contain a specific timetable for setting the date of a special election, Section 23-15-857 should be followed. Turnage, Aug. 23, 2006, A.G. Op. 06-0400.

There is no authority for municipal governing authorities to remove or suspend an elected police chief based on an indictment. A municipal governing authority may make the police chief or other municipal officers appointive, rather than elective, by adopting an ordnance, not within 90 days of an election, that will become effective when the current officer's term expires. If an elected Chief of Police resigns or is disqualified from his position and the remainder of the term is over 6 months, the City must hold a special election to fill the vacancy pursuant to Miss. Code Ann. § 23-15-857. Elliott, March 23, 2007, A.G. Op. #07-00137, 2007 Miss. AG LEXIS 116.

§ 23-15-859. Date of special municipal election; notice.

JUDICIAL DECISIONS

1. Special elections.

While the special tribunal correctly found that a special election was required, it erred in excluding a losing candidate from the special election because a general election had already occurred and the statutes at issue did not limit a special election to certain candidates. Randle v. Ivy, 268 So. 3d 530, 2019 Miss. LEXIS 51 (Miss. 2019).

OPINIONS OF THE ATTORNEY GENERAL

As the Special Charter of a city contain provisions which establish the time frame in which a special election to fill a vacancy shall be held, there is no need to refer to general law, and the provisions of the Charter would control. Alexander, May 30, 2003, A.G. Op. 03-0269.

While a city's special charter provides for a time frame in which to hold a special election to fill a vacancy in a municipal office, but is silent as to the proper publication of such election, using Section 23-15-859 as guidance on the question of publication is reasonable and within the authority of the governing authorities of the city. Alexander, May 30, 2003, A.G. Op. 03-0269.

ARTICLE 27.

REGULATION OF ELECTIONS.

§ 23-15-871. General prohibitions with respect to employers, employees, and public officials.

OPINIONS OF THE ATTORNEY GENERAL

State employees may take personal leave to engage in political campaign activities. Ray, March 6, 1998, A.G. Op. #98-0114.

As a general rule, public employees may engage in political activities when on personal leave, but any employee who engages in political activity proscribed by the statute while at work is subject to disciplinary action. Warren, Feb. 11, 2000, A.G. Op. #2000-0042.

Nothing prohibits an incumbent public official from handing out campaign cards to voters who come into the courthouse, provided it does not interfere with the conduct of business. Griffin, July 18, 2003, A.G. Op. 03-0336.

Under state law, an employee of the Mississippi Development Authority may continue that employment during candidacy for an elective office. A state employee may take personal leave while running for office until exhausting all accrued personal leave and all lawfully accumulated compensatory leave, and then the appropriate appointing authority may lawfully grant a leave of absence without pay. Swoope, February 16, 2007, A.G. Op. #07-00082, 2007 Miss. AG LEXIS 23.

§ 23-15-881. Prohibitions against excessive expenditures or hiring of workers for state highways or public roads; maintenance of records.

OPINIONS OF THE ATTORNEY GENERAL

With the sole exception of supervisors and contracts falling within the provisions of § 19-11-27, the prohibitions of §§ 19-11-27, 65-7-95 and 23-15-881 apply to supervisors who are unopposed in the primaries and general elections. Trapp, May 7, 1999, A.G. Op. #99-0220.

This section does not prohibit a board of supervisors from entering into an agreement for a loan under the local governments capital improvements revolving loan program provided by §§ 57-1-301 et seq. at any time during the last year of their terms of office. Lamar, July 30, 1999, A.G. Op. #99-0368.

§ 23-15-889. Prohibitions against buying or selling vote or offering to do so; penalties.

OPINIONS OF THE ATTORNEY GENERAL

Since no one was being asked by a mayoral candidate to vote for her in exchange for a pie, cake or gift, there was nothing to prohibit her from continuing to bake pies and cakes for friends, seniors, the sick and children's birthdays while running for office. Whitehead, Feb. 25, 2005, A.G. Op. 05-0069.

§ 23-15-895. Prohibition against distribution of campaign material within 150 feet of polling place; prohibition against appearance of certain persons at polling place while armed, uniformed, or displaying badge or credentials; enforcement.

OPINIONS OF THE ATTORNEY GENERAL

To the extent that campaigning involves the posting or distribution of campaign literature inside the courthouse (or other building wherein the registrar's office is located) and within 150 feet of any entrance thereto during the 45 day absentee balloting period, it is prohibited. Griffin, July 18, 2003, A.G. Op. 03-0336.

ARTICLE 29.

ELECTION CONTESTS.

SUBARTICLE A.

GENERAL PROVISIONS.

§ 23-15-911. Control of ballot boxes and their contents after general or primary elections; examinations by candidates or their representatives.

OPINIONS OF THE ATTORNEY GENERAL

No statute specifically makes it a crime to fail to comply with the statute in general, although willful violations of law are provided for in Section 97-13-19. Hayes, Jan. 7, 2000, A.G. Op. #99-0703.

This section contemplates that once the examination by a candidate begins it is to be a continuous one from day to day until completion. It is our opinion that once the examination is completed and the boxes resealed a second examination by that candidate is not contemplated or authorized. Neal, Sept. 26, 2003, A.G. Op. 03-0517.

Where a letter of complaint apparently seeking an examination of ballot boxes was received by the circuit clerk more than 12 days after certification of the election results by the county election commission, and there was no indication that the other candidates were given the required notice, no examination could be conducted. Dowdy, Dec. 19, 2003, A.G. Op. 03-0661.

SUBARTICLE B.

CONTESTS OF PRIMARY ELECTIONS.

§ 23-15-921. Nominations to county or county district offices, etc.; petition, notice of contest, investigation, and determination.

OPINIONS OF THE ATTORNEY GENERAL

A party executive committee is under an obligation to dispose of an election contest sufficiently in advance of the general election as will allow the orderly preparation of the ballot and conduct of said election by the county election commission. Townsen, Nov. 14, 1991, A.G. Op. #91-0886.

If the executive committee delays disposing of the contest and the election commission proceeds to have the ballots for the general election printed with the certified nominee's name included thereon and, in this case, conducts the general election and certifies the nominee in question as the winner, the committee, loses its jurisdiction over the matter and any findings by the committee thereafter would be of no effect. Townsen, Nov. 14, 1991, A.G. Op. #91-0886.

Absent an election contest, this section provides no authority to conduct an investigation with regard to an election result. Tate, Aug. 20, 2003, A.G. Op. 03-0471.

§ 23-15-937. Transfer of hearing; requirement of prompt adjudication; circumstances requiring special election.

JUDICIAL DECISIONS

1. In general.

Circuit court did not err in denying appellant's motion to be declared Humphreys County Tax Assessor and Collector, or, in the alternative, to declare the office vacant because appellee had already taken office on January 6, 2020, before the circuit judge entered the opinion and order that nullified the primary election and ordered a special election; under this statute, appellee was now the lawful holder of the office, and the office was not vacant; and appellee was the rightful officeholder until a qualified person was elected in the special election set to be held on August 3, 2020. Parks v. Horton (In re Democratic Primary for Humphreys Cty. Tax Assessor & Collector), 299 So. 3d 777, 2020 Miss. LEXIS 338 (Miss. 2020).

While the special tribunal correctly found that a special election was required, it erred in excluding a losing candidate from the special election because a general election had already occurred and the statutes at issue did not limit a special election to certain candidates. Randle v. Ivy, 268 So. 3d 530, 2019 Miss. LEXIS 51 (Miss. 2019).

SUBARTICLE C.

CONTESTS OF OTHER ELECTIONS.

§ 23-15-951. Filing of petition; designation of judges to hear election contests; trial by, and verdict of, jury; assumption of office.

OPINIONS OF THE ATTORNEY GENERAL

Although municipal governing authorities should not pay for legal costs incurred by a winning candidate or that candidate's party when an election is challenged, they may employ attorneys to represent the municipality's interest in upholding the validity of a general municipal election. Tennyson, Aug. 8, 1997, A.G. Op. #97-0469.

Certain amendments to this section (enacted by H..B. 1537 [2000]), addressing contesting elections to legislative seats, have been precleared and are enforceable. However, the return to the practice of allowing a local judge hear election contests without the benefit of the appointment of a judge from outside the district has not been precleared, and thus, that portion of of this section is unenforceable. Bearman, Aug. 27, 2004, A.G. Op. 04-0443.

SUBARTICLE D.

CONTESTS OF QUALIFICATIONS OF CANDIDATES.

§ 23-15-963. Exclusive procedures for contesting qualifications of candidate for general election; exceptions.

OPINIONS OF THE ATTORNEY GENERAL

Because the employment a hearing officer by the county election commission to preside over an election contest convened under subsection (1) of this section did not have the statutorily required approval of the County Board of Supervisors, no compensation would be authorized. Griffith, Oct. 31, 2003, A.G. Op. 03-0554.

ARTICLE 31.

JUDICIAL OFFICES.

Subarticle A. General Provisions. 23-15-971

SUBARTICLE A.

GENERAL PROVISIONS.

Sec.

23-15-977. Filing of intent to be candidate and fees by candidates for judicial office; notification of county commissioners of filings; procedures to be followed if there is only one candidate who becomes disqualified from holding judicial office after filing deadline.

§ 23-15-973. Opportunities for candidates to address people during court terms; restrictions with respect to political affiliations; penalties for violations.

JUDICIAL DECISIONS

1. Election contest.

Trial court correctly granted summary judgment in favor of a judge in a candidate's election contest because the candidate failed to submit proof to support her allegations. James v. Westbrooks, 275 So. 3d 62, 2019 Miss. LEXIS 177 (Miss. 2019).

Trial court correctly granted summary judgment in favor of a judge in a candidate's election contest because the candidate failed to produce any evidence that the judge previewed and approved a "Sample Official Democratic Election Ballot"; the judge refuted the candidate's claim that the judge requested or instructed the friends of a representative of the Mississippi Second United States Congressional District to place her name on the sample democratic ballots of which the candidate complained. James v. Westbrooks, 275 So. 3d 62, 2019 Miss. LEXIS 177 (Miss. 2019).

§ 23-15-976. Judicial office deemed nonpartisan office; candidate for judicial office prohibited from campaigning or qualifying for office based on party affiliation; prohibition on political party fund-raising, campaigning, or contributions on behalf of candidate for judicial office.

JUDICIAL DECISIONS

1. Election contest.

Trial court correctly granted summary judgment in favor of a judge in a candidate's election contest because the candidate failed to submit proof to support her allegations. James v. Westbrooks, 275 So. 3d 62, 2019 Miss. LEXIS 177 (Miss. 2019).

§ 23-15-977. Filing of intent to be candidate and fees by candidates for judicial office; notification of county commissioners of filings; procedures to be followed if there is only one candidate who becomes disqualified from holding judicial office after filing deadline.

(1) Except as otherwise provided in this section, all candidates for judicial office as defined in Section 23-15-975 of this subarticle shall file their intent to be a candidate with the proper officials and pay the proper assessment by not later than 5:00 p.m. on March 1 of the year in which the general election for the judicial office is held. If March 1 occurs on a Saturday, Sunday or legal holiday, candidates shall file their intent to be a candidate and pay the proper assessment by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday. Candidates shall pay to the proper officials the following amounts:

(a) Candidates for Supreme Court judge and Court of Appeals, the sum of Two Hundred Dollars ($200.00).

(b) Candidates for circuit judge and chancellor, the sum of One Hundred Dollars ($100.00).

(c) Candidates for county judge and family court judge, the sum of Fifteen Dollars ($15.00).

Candidates for judicial office may not file their intent to be a candidate and pay the proper assessment before January 1 of the year in which the election for the judicial office is held.

(2) Candidates for judicial offices listed in paragraphs (a) and (b) of subsection (1) of this section shall file their intent to be a candidate with, and pay the proper assessment made pursuant to subsection (1) of this section to, the State Board of Election Commissioners.

(3) Candidates for judicial offices listed in paragraph (c) of subsection (1) of this section shall file their intent to be a candidate with, and pay the proper assessment made pursuant to subsection (1) of this section to, the circuit clerk of the proper county. The circuit clerk shall notify the county election commissioners of all persons who have filed their intent to be a candidate with,

and paid the proper assessment to, such clerk. The notification shall occur within two (2) business days and shall contain all necessary information.

(4) If only one (1) person files his or her intent to be a candidate for a judicial office and that person later dies, resigns or is otherwise disqualified from holding the judicial office after the deadline provided for in subsection (1) of this section but more than seventy (70) days before the date of the general election, the Governor, upon notification of the death, resignation or disqualification of the person, shall issue a proclamation authorizing candidates to file their intent to be a candidate for that judicial office for a period of not less than seven (7) nor more than ten (10) days from the date of the proclamation.

(5) If only one (1) person qualifies as a candidate for a judicial office and that person later dies, resigns or is otherwise disqualified from holding the judicial office within seventy (70) days before the date of the general election, the judicial office shall be considered vacant for the new term and the vacancy shall be filled as provided in by law.

HISTORY: Laws, 1994, ch 564, § 79; Laws, 2000, ch. 592, § 15; Laws, 2010, ch. 379, § 1; Laws, 2011, ch. 509, § 1; Laws, 2017, ch. 441, § 156, eff from and after July 1, 2017; Laws, 2019, ch. 402, § 1, eff from and after July 1, 2019.

Amendment Notes — The 2019 amendment, in the introductory paragraph of (1), substituted "proper officials and pay the proper assessment by not later than 5:00 p.m. on March 1 of the year in which the general election for the judicial office is held" for "proper officials not later than 5:00 p.m. on the first Friday after the first Monday in May before the general election for judicial office and shall pay to the proper officials the following amounts," and added the last two sentences.

§ 23-15-981. Two or more candidates qualify for judicial office; majority vote wins; runoff election.

OPINIONS OF THE ATTORNEY GENERAL

If the candidate with the most votes or the candidate with the second most votes declines to enter the runoff, the candidate with the next highest votes would be entitled to have his name placed on the runoff ballot. Chaney, Nov. 7, 2002, A.G. Op. #02-0676.

CHAPTER 17.

AMENDMENTS TO CONSTITUTION BY VOTER INITIATIVE

§ 23-17-1. Procedures by which qualified electors may initiate proposed amendments to the constitution.

OPINIONS OF THE ATTORNEY GENERAL

The sponsor of an initiative must identify in the text of an initiative the amount and source of revenue required to implement the initiative; if the initiative would

reduce government revenues or would require a reduction of funds to programs or a reallocation of funds between programs, then the sponsor must set forth in the text of the initiative exactly which program or programs will be cut back or eliminated, and the sponsor must provide sufficient facts so that the voters are informed as to the effect of the initiative on sources of government revenues and current programs; if the sponsor asserts that no adverse impact will occur in sources of government revenues, the sponsor must establish a rational basis to support such assertion. Nunnelee, Mar. 23, 2001, A.G. Op. #01-0738.

§ 23-17-5. Submission of proposed initiative to Attorney General; review; recommendations; certificate of review; filing of proposed initiative and certificate.

OPINIONS OF THE ATTORNEY GENERAL

The intent of this section is that the final text of the proposed initiative and the certificate of review must be filed within the required 15 working days; if such is not done, the initiative is no longer valid and the Secretary of State should not assign the measure a serial number and should not forward same to the Attorney General. Carter, March 26, 1999, A.G. Op. #99-0006.

A municipality, by and through its utility commission, may enter into contracts with parties for use of city property for antennaes, provided that the commission determines, consistent with the facts, that to do so would be in the best interest of the municipality; and, although the city may contract with a third party to solicit and manage/oversee such contracts, the final contracts must be between the city and the users. Flanagan, Jr., April 14, 2000, A.G. Op. #2000-0164.

§ 23-17-15. Filing of instrument establishing title and summary of measure; notice to initiator; title and summary to be used in all proceedings.

OPINIONS OF THE ATTORNEY GENERAL

The 12-month period for the collection of petitions for an initiative began to run on the date the proponent of the initiative received from the Secretary of State a court order amending the ballot title and summary for the proposed initiative and "finally establishing" same, rather than the earlier date on which the proponent received the original ballot title and ballot summary or the later date on which the appeal of the court order was dismissed. Scott, Sept. 20, 2001, A.G. Op. #01-0586.

§ 23-17-57. Unlawful to give or offer consideration to elector.

OPINIONS OF THE ATTORNEY GENERAL

People gathering signatures on petitions that are not covered by § 23-17-57(4) may be within 150 feet of the entrance of a polling place but not within 30 feet of any room in which an election is being held; however, it is the duty of the election bailiff to insure that anyone collecting signatures does not, in any manner, impede the progress of voters coming into a polling place to vote. Sanford, Feb. 1, 2002, A.G. Op. #02-0028.